Customs Bulletin

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and Decisions

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 80–216)

Approval and discontinuance of consolidated aircraft bonds (air carrier blanket bonds), Customs form 7605

The following consolidated aircraft bonds have been approved or discontinued as shown below. The symbol D indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. PB refers to a previous bond, dated as represented by the figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: August 20, 1980.

Name of principal and surety	Date term commences	Date of approval	Filed with district director/area director/amount
Eastern Air Lines, Inc., Miami International Airport, Miami, FL; American Casualty Co. of Reading, PA (PB 4/9/79) D 5/10/80 [1]	May 11, 1980	May 11, 1980	New York Seaport; $100,000
Hughes Air Corp., d/b/a Hughes Airwest, San Francisco International Airport, San Francisco, CA; Safeco Ins. Company of America (PB 9/18/72) 9/18/79 [2]	Sept. 18, 1979	Nov. 1, 1979	San Francisco, CA; $100,000

NOTE.—The foregoing principles have been designated as carriers of bonded merchandise.

Name of principal and surety	Date term commences	Date of approval	Filed with district director/area director/amount
JAT–Yugoslav Airlines, 630 Fifth Ave., New York, NY; Old Republic Ins. Co. (PB 10/11/76) D 7/5/80 [3]	July 5, 1980	July 14, 1980	JFK Airport, NY; $100,000

NOTE.—The foregoing principal has not been designated as a carrier of bonded merchandise.

[1] Surety is Firemen's Insurance Co. of Newark, NJ.

[2] Principal is Hughes Air West. Surety is the American Insurance Co.

[3] Surety is Boston Old Colony Ins. Co.

BON–3–01

ALFRED G. SCHOLLE,
Director, Carriers, Drawback and Bonds Division.

(T.D. 80-217)

Instruments of International Traffic

Certain steel wires used for the transportation of razor blade cartridge spacers designated as instruments of international traffic

It has been established to the satisfaction of the U.S. Customs Service that holders, generally referred to as steel spacer wires, composed of a 16-gage U-shaped wire measuring 17¾ inches long at one end and 17⅝ inches long at the other end, with an 11- or 12-gage wire 1¾ inches long spot welded to the U, and with a retainer of metal or rubber closing the other end when loaded, used for the transportation of steel spacers to be incorporated into twin blade razor cartridges, are substantial, suitable for and capable of repeated use, and used in significant numbers in international traffic.

Under the authority of section 10.41a(a)(1), Customs Regulations, I hereby designate the above-described steel wires as instruments of international traffic within the meaning of section 322(a), Tariff Act of 1930, as amended (19 U.S.C. 1322(a)). These holders may be released under the procedures provided for in section 10.41a, Customs Regulations.

(BOR-7-07)

Dated: August 15, 1980.

ALFRED G. SCHOLLE,
Director, Carriers,
Drawback and Bonds Division.

(T.D. 80-218)

(521852)

General Agreement on Tariffs and Trade

Parts 1 to 5 of annex I to Presidential Proclamation 4768 of June 28, 1980

Reprinted below are the documents included in annex I to Presidential Proclamation 4768 of June 28, 1980. Proclamation 4768, to carry out the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the Customs Valuation Code) and other purposes, was printed on July 2, 1980, in the Federal

Register (45 F.R. 45135). Foreign language texts of the agreements in annex I, i.e., parts 1 and 4, are omitted from the following reproduction.

Dated: August 21, 1980.

JOHN T. ROTH,
Acting Director,
Office of Regulations and Rulings.

ANNEX I

TEXTS OF CERTAIN AGREEMENTS IDENTIFIED IN THE THIRD AND FOURTH RECITAL OF PROCLAMATION 4768 OF JUNE 28, 1980

Part 1.—Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the Customs Valuation Code) Entered Into on April 12, 1979

Part 2.—Trade Agreement with Switzerland Entered Into on December 18 and 21, 1979

Part 3.—Trade Agreements with the European Communities (including the European Economic Community) Entered Into on December 21, 1979, on December 27, 1979, and on January 2, 1980

Part 4.—Trade Agreement with the Dominican Republic Entered Into on January 2, 1980

Part 5.—Trade Agreement with Indonesia Entered Into on December 20 and December 29, 1979

PART 1.—AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE (THE CUSTOMS VALUATION CODE) ENTERED INTO ON APRIL 12, 1979

AGREEMENT ON IMPLEMENTATION OF ARTICLE VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE

PREAMBLE

Having regard to the Multilateral Trade Negotiations, the Parties to this Agreement (hereinafter referred to as "Parties"),

Desiring to further the objectives of the General Agreement on Tariffs and Trade (hereinafter referred to as "General Agreement" or "GATT") and to secure additional benefits for the international trade of developing countries;

Recognizing the importance of the provisions of Article VII of the General Agreement and desiring to elaborate rules for their application in order to provide greater uniformity and certainty in their implementation;

Recognizing the need for a fair, uniform and neutral system for the valuation of goods for customs purposes that precludes the use of arbitrary or fictitious customs values;

Recognizing that the basis for valuation of goods for customs purposes should, to the greatest extent possible, be the transaction value of the goods being valued;

Recognizing that customs value should be based on simple and equitable criteria consistent with commercial practices and that valuation procedures should be of general application without distinction between sources of supply;

Recognizing that valuation procedures should not be used to combat dumping;

Hereby agree as follows:

PART I

RULES ON CUSTOMS VALUATION

Article 1

1. The customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8, provided:

(*a*) that there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which:

(i) are imposed or required by law or by the public authorities in the country of importation;

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(*b*) that the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;

(*c*) that no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article 8; and

(*d*) that the buyer and seller are not related, or where the buyer and seller are related, that the transaction value is acceptable for customs purposes under the provisions of paragraph 2 of this Article.

2. (*a*) In determining whether the transaction value is acceptable for the purposes of paragraph 1, the fact that the buyer and the seller are related within the meaning of Article 15 shall not in itself be grounds for regarding the transaction value as unacceptable. In such case the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship did not influence the price. If, in the light of information provided by the importer or otherwise, the customs administration has grounds for considering that the relationship influenced the price, it shall communicate its grounds to the importer and he shall be given a reasonable opportunity to respond. If the importer so requests, the communication of the grounds shall be in writing.

(*b*) In a sale between related persons, the transaction value shall be accepted and the goods valued in accordance with the provisions of paragraph 1 whenever the importer demonstrates that such value closely approximates to one of the following occurring at or about the same time:

(i) the transaction value in sales to unrelated buyers of identical or similar goods for export to the same country of importation;

(ii) the customs value of identical or similar goods as determined under the provisions of Article 5;

(iii) the customs value of identical or similar goods as determined under the provisions of Article 6;

(iv) the transaction value in sales to unrelated buyers for export to the same country of importation of goods which would be identical to the imported goods except for having a different country of production provided that the sellers in any two transactions being compared are not related.

In applying the foregoing tests, due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in Article 8 and costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

(*c*) The tests set forth in paragraph 2(*b*) are to be used at the initiative of the importer and only for comparison purposes. Substitute values may not be established under the provisions of paragraph 2(*b*).

Article 2

1. (*a*) If the customs value of the imported goods cannot be determined under the provisions of Article 1, the customs value shall be the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.

(*b*) In applying this Article, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of identical goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2. Where the costs and charges referred to in Article 8.2 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the identical goods in question arising from differences in distances and modes of transport.

3. If, in applying this Article, more than one transaction value of identical goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 3

1. (*a*) If the customs value of the imported goods cannot be determined under the provisions of Articles 1 and 2, the customs value shall be the transaction value of similar goods sold for export to the same country of importation and exported at or about the same time as the goods being valued.

(*b*) In applying this Article, the transaction value of similar goods in a sale at the same commercial level and in substantially the same

quantity as the goods being valued shall be used to determine the customs value. Where no such sale is found, the transaction value of similar goods sold at a different commercial level and/or in different quantities, adjusted to take account of differences attributable to commercial level and/or to quantity, shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or a decrease in the value.

2. Where the costs and charges referred to in Article 8.2 are included in the transaction value, an adjustment shall be made to take account of significant differences in such costs and charges between the imported goods and the similar goods in question arising from differences in distances and modes of transport.

3. If, in applying this Article, more than one transaction value of similar goods is found, the lowest such value shall be used to determine the customs value of the imported goods.

Article 4

If the customs value of the imported goods cannot be determined under the provisions of Articles 1, 2 and 3 the customs value shall be determined under the provisions of Article 5 or, when the customs value cannot be determined under that Article, under the provisions of Article 6 except that, at the request of the importer, the order of application of Articles 5 and 6 shall be reversed.

Article 5

1. (*a*) If the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported, the customs value of the imported goods under the provisions of this Article shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to deductions for the following:

(i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connexion with sales in such country of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within the country of importation;

(iii) where appropriate, the costs and charges referred to in Article 8.2; and

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(iv) the customs duties and other national taxes payable in the country of importation by reason of the importation or sale of the goods.

(*b*) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject otherwise to the provisions of paragraph 1(*a*) of this Article, be based on the unit price at which the imported goods or identical or similar imported goods are sold in the country of importation in the condition as imported at the earliest date after the importation of the goods being valued but before the expiration of ninety days after such importation.

2. If neither the imported goods nor identical nor similar imported goods are sold in the country of importation in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the country of importation who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in paragraph 1(*a*) of this Article.

Article 6

1. The customs value of imported goods under the provisions of this Article shall be based on a computed value. Computed value shall consist of the sum of:

(*a*) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(*b*) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation;

(*c*) the cost or value of all other expenses necessary to reflect the valuation option chosen by the Party under Article 8.2.

2. No Party may require or compel any person not resident in its own territory to produce for examination, or to allow access to, any account or other record for the purposes of determining a computed value. However, information supplied by the producer of the goods for the purposes of determining the customs value under the provisions of this Article may be verified in another country by the authorities of the country of importation with the agreement of the producer and provided they give sufficient advance notice to the government of the country in question and the latter does not object to the investigation.

Article 7

1. If the customs value of the imported goods cannot be determined under the provisions of Articles 1 to 6, inclusive, the customs value shall be determined using reasonable means consistent with the principles and general provisions of this Agreement and of Article VII of the General Agreement and on the basis of data available in the country of importation.

2. No customs value shall be determined under the provisions of this Article on the basis of:

(*a*) the selling price in the country of importation of goods produced in such country;

(*b*) a system which provides for the acceptance for customs purposes of the higher of two alternative values;

(*c*) the price of goods on the domestic market of the country of exportation;

(*d*) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of Article 6;

(*e*) the price of the goods for export to a country other than the country of importation;

(*f*) minimum customs values; or

(*g*) arbitrary or fictitious values.

3. If he so requests, the importer shall be informed in writing of the customs value determined under the provisions of this Article and the method used to determine such value.

Article 8

1. In determining the customs value under the provisions of Article 1, there shall be added to the price actually paid or payable for the imported goods:

(*a*) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:

(i) commissions and brokerage, except buying commissions;

(ii) the cost of containers which are treated as being one for customs purposes with the goods in question;

(iii) the cost of packing whether for labor or materials;

(*b*) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connexion with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:

(i) materials, components, parts and similar items incorporated in the imported goods;
(ii) tools, dies, moulds and similar items used in the production of the imported goods;
(iii) materials consumed in the production of the imported goods;
(iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the country of importation and necessary for the production of the imported goods;

(*c*) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sales of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(*d*) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller.

2. In framing its legislation, each Party shall provide for the inclusion in or the exclusion from the customs value, in whole or in part, of the following:

(*a*) the cost of transport of the imported goods to the port or place of importation;
(*b*) loading, unloading and handling charges associated with the transport of the imported goods to the port or place of importation; and
(*c*) the cost of insurance.

3. Additions to the price actually paid or payable shall be made under this Article only on the basis of objective and quantifiable data.

4. No additions shall be made to the price actually paid or payable in determining the customs value except as provided in this Article.

Article 9

1. Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used shall be that duly published by the competent authorities of the country of importation concerned and shall reflect as effectively as possible, in respect of the period covered by each such document of publication, the current value of such currency in commercial transactions in terms of the currency of the country of importation.

2. The conversion rate to be used shall be that in effect at the time of exportation or the time of importation, as provided by each Party.

Article 10

All information which is by nature confidential or which is provided on a confidential basis for the purposes of customs valuation shall be treated as strictly confidential by the authorities concerned who shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.

Article 11

1. The legislation of each Party shall provide in regard to a determination of customs value for the right of appeal, without penalty, by the importer or any other person liable for the payment of the duty.

2. An initial right of appeal without penalty may be to an authority within the customs administration or to an independent body, but the legislation of each Party shall provide for the right of appeal without penalty to a judicial authority.

3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. He shall also be informed of his rights of any further appeal.

Article 12

Laws, regulations, judicial decisions and administrative rulings of general application giving effect to this Agreement shall be published in conformity with Article X of the General Agreement by the country of importation concerned.

Article 13

If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer shall nevertheless be able to withdraw his goods from customs if, where so required, he provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable. The legislation of each Party shall make provisions for such circumstances.

Article 14

The notes at Annex I to this Agreement form an integral part of this Agreement and the Articles of this Agreement are to be read and applied in conjunction with their respective notes. Annexes II and III also form an integral part of this Agreement.

Article 15

1. In this Agreement:

(*a*) "customs value of imported goods" means the value of goods for the purposes of levying ad valorem duties of customs on imported goods;

(*b*) "country of importation" means country or customs territory of importation; and

(*c*) "produced" includes grown, manufactured and mined.

2. (*a*) In this Agreement "identical goods" means goods which are the same in all respects, including physical characteristics, quality and reputation. Minor differences in appearance would not preclude goods otherwise conforming to the definition from being regarded as identical.

(*b*) In this Agreement "similar goods" means goods which, although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable. The quality of the goods, their reputation and the existence of a trademark are among the factors to be considered in determining whether goods are similar.

(*c*) The terms "identical goods" and "similar goods" do not include, as the case may be, goods which incorporate or reflect engineering, development, artwork, design work, and plans and sketches for which no adjustment has been made under Article 8.1(*b*)(iv) because such elements were undertaken in the country of importation.

(*d*) Goods shall not be regarded as "identical goods" or "similar goods" unless they were produced in the same country as the goods being valued.

(*e*) Goods produced by a different person shall be taken into account only when there are no identical goods or similar goods, as the case may be, produced by the same person as the goods being valued.

3. In this Agreement "goods of the same class or kind" means goods which fall within a group or range of goods produced by a particular industry or industry sector, and includes identical or similar goods.

4. For the purposes of this Agreement, persons shall be deemed to be related only if:

(*a*) they are officers or directors of one another's businesses;

(*b*) they are legally recognized partners in business;

(*c*) they are employer and employee;

(*d*) any person directly or indirectly owns, controls or holds 5 percent or more of the outstanding voting stock or shares of both of them;

(*e*) one of them directly or indirectly controls the other;

(*f*) both of them are directly or indirectly controlled by a third person;

(*g*) together they directly or indirectly control a third person; or
(*h*) they are members of the same family.

5. Persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire, however described, of the other shall be deemed to be related for the purposes of this Agreement if they fall within the criteria of paragraph 4 of this Article.

Article 16

Upon written request, the importer shall have the right to an explanation in writing from the customs administration of the country of importation as to how the customs value of his imported goods was determined.

Article 17

Nothing in this Agreement shall be construed as restricting or calling into question the rights of customs administrations to satisfy themselves as to the truth or accuracy of any statement, document or declaration presented for customs valuation purposes.

PART II

ADMINISTRATION, CONSULTATION AND DISPUTE SETTLEMENT

Institutions

Article 18

There shall be established under this Agreement:

1. A Committee on Customs Valuation (hereinafter referred to as the Committee) composed of representatives from each of the Parties. The Committee shall elect its own Chairman and shall normally meet once a year, or as is otherwise envisaged by the relevant provisions of this Agreement, for the purpose of affording Parties the opportunity to consult on matters relating to the administration of the customs valuation system by any Party as it might affect the operation of this Agreement or the furtherance of its objectives and carrying out such other responsibilities as may be assigned to it by the Parties. The GATT secretariat shall act as the secretariat to the Committee.

2. A Technical Committee on Customs Valuation (hereinafter referred to as the Technical Committee) under the auspices of the Customs Cooperation Council, which shall carry out the responsibilities described in Annex II to this Agreement and shall operate in accordance with the rules of procedure contained therein.

Consultation

Article 19

1. If any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of this Agreement is being impeded, as a result of the actions of another Party or of other Parties, it may, with a view to reaching a mutually satisfactory solution of the matter, request consultations with the Party or Parties in question. Each Party shall afford reaching a mutually satisfactory solution of the matter, request consultations with the Party or Parties in question. Each Party shall afford sympathetic consideration to any request from another Party for consultations.

2. The Parties concerned shall initiate requested consultations promptly.

3. Parties engaged in consultations on a particular matter affecting the operation of this Agreement shall attempt to conclude such consultations within a reasonably short period of time. The Technical Committee shall provide, upon request, advice and assistance to Parties engaged in consultations.

Dispute settlement

Article 20

1. If no mutually satisfactory solution has been reached between the Parties concerned in consultations under Article 19 above, the Committee shall meet at the request of any party to the dispute, within thirty days of receipt of such a request, to investigate the matter, with a view to facilitating a mutually satisfactory solution.

2. In investigating the matter and in selecting its procedures, the Committee shall take into account whether the issues in dispute relate to commercial policy considerations or to questions requiring detailed technical consideration. The Committee may request on its own initiative that the Technical Committee carry out an examination, as provided in paragraph 4 below, of any question requiring technical consideration. Upon the request of any party to the dispute that considers the issues to relate to questions of a technical nature, the Committee shall request the Technical Committee to carry out such an examination.

3. During any phase of a dispute settlement procedure, competent bodies and experts in matters under consideration may be consulted; appropriate information and assistance may be requested from such bodies and experts. The Committee shall take into consideration the

results of any work of the Technical Committee that pertain to the matter in dispute.

Technical issues

4. When the Technical Committee is requested under the provisions of paragraph 2 above, it shall examine the matter and report to the Committee no later than three months from the date the technical issue was referred to it, unless the period is extended by mutual agreement between the parties to the dispute.

Panel proceedings

5. In cases where the matter is not referred to the Technical Committee, the Committee shall establish a panel upon the request of any party to the dispute if no mutually satisfactory solution has been reached within three months from the date of the request to the Committee to investigate the matter. Where the matter is referred to the Technical Committee, the Committee shall establish a panel upon the request of any party to the dispute if no mutually satisfactory solution has been reached within one month from the date when the Technical Committee presents its report to the Committee.

6. (*a*) When a panel is established, it shall be governed by the procedures as set forth in Annex III.

(*b*) If the Technical Committee has made a report on the technical aspects of the matter in dispute, the panel shall use this report as the basis for its consideration of the technical aspects of the matter in dispute.

Enforcement

7. After the investigation is completed or after the report of the Technical Committee or panel is presented to the Committee, the Committee shall give the matter prompt consideration. With respect to panel reports, the Committee shall take appropriate action normally within thirty days of receipt of the report. Su ch action shall include:

(i) a statement concerning the facts of the matter; and

(ii) recommendations to one or more Parties or any other ruling which it deems appropriate.

8. If a Party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee. In that event, the Committee shall consider what further action may be appropriate.

9. If the Committee considers that the circumstances are serious enough to justify such action, it may authorize one or more Parties to suspend the application to any other Party or Parties of such obliga-

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tions under this Agreement as it determines to be appropriate in the circumstances.

10. The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

11. If a dispute arises between Parties relating to rights and obligations under this Agreement, Parties should complete the dispute settlement procedures under this Agreement before availing themselves of any rights which they have under the GATT, including invoking Article XXIII thereof.

PART III

SPECIAL AND DIFFERENTIAL TREATMENT

Article 21

1. Developing country Parties may delay application of its provisions for a period not exceeding five years from the date of entry into force of this Agreement for such countries. Developing country Parties who choose to delay application of this Agreement shall notify the Director-General to the Contracting Parties to the GATT accordingly.

2. In addition to paragraph 1 above, developing country Parties may delay application of Article 1.2(*b*)(iii) and Article 6 for a period not exceeding three years following their application of all other provisions of this Agreement. Developing country Parties that choose to delay application of the provisions specified in this paragraph shall notify the Director-General to the Contracting Parties to the GATT accordingly.

3. Developed country Parties shall furnish, on mutually agreed terms, technical assistance to developing country Parties that so request. On this basis developed country Parties shall draw up programmes of technical assistance which may include, *inter alia*, training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of this Agreement.

PART IV

FINAL PROVISIONS

Acceptance and accession

Article 22

1. This Agreement shall be open for acceptance by signature or otherwise by governments contracting parties to the GATT and by the European Economic Community.

2. This Agreement shall be open for acceptance by signature or otherwise by governments having provisionally acceded to the GATT,

on terms related to the effective application of rights and obligations under this Agreement, which take into account rights and obligations in the instruments providing for their provisional accession.

3. This Agreement shall be open to accession by any other government on terms, related to the effective application of rights and obligations under this Agreement, to be agreed between that government and the Parties by the deposit with the Director-General to the Contracting Parties to the GATT of an instrument of accession which states the terms so agreed.

4. In regard to acceptance, the provisions of Article XXVI:5 (*a*) and (*b*) of the General Agreement would be applicable.

Reservations

Article 23

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Parties.

Entry into force

Article 24

This Agreement shall enter into force on 1 January 1981 for the governments [1] which have accepted or acceded to it by that date. For each other government it shall enter into force on the thirtieth day following the date of its acceptance or accession to this Agreement.

National legislation

Article 25

1. Each government accepting or acceding to this Agreement shall ensure, not later than the date of entry into force of this Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement.

2. Each Party shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

Review

Article 26

The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives

[1] The term "governments" is deemed to include the competent authorities of the European Economic Community.

thereof. The Committee shall annually inform the Contracting Parties to the GATT of developments during the period covered by such reviews.

Amendments

Article 27

The Parties may amend this Agreement, having regard, *inter alia*, to the experience gained in its implementation. Such an amendment, once the Parties have concurred in accordance with procedures established by the Committee, shall not come into force for any Party until it has been accepted by such Party.

Withdrawal

Article 28

Any Party may withdraw from this Agreement. The withdrawal shall take effect upon the expiration of sixty days from the date on which written notice of withdrawal is received by the Director-General to the Contracting Parties to the GATT. Any Party may, upon the receipt of such notice, request an immediate meeting of the Committee.

Secretariat

Article 29

This Agreement shall be serviced by the GATT secretariat except in regard to those responsibilities specifically assigned to the Technical Committee, which will be serviced by the secretariat of the Customs Co-operation Council.

Deposit

Article 30

This Agreement shall be deposited with the Director-General to the Contracting Parties to the GATT, who shall promptly furnish to each Party and each contracting party to the GATT a certified copy thereof and of each amendment thereto pursuant to Article 27, and a notification of each acceptance thereof or accession thereto pursuant to Article 22 and of each withdrawal therefrom pursuant to Article 28.

Registration

Article 31

This Agreement shall be registerel in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this twelfth day of April nineteen hundred and seventy-nine in a single copy, in the English, French and Spanish languages, each text being authentic.

ANNEX I

INTERPRETATIVE NOTES

General Note

Sequential application of valuation methods

1. Articles 1 to 7, inclusive, define how the customs value of imported goods is to be determined under the provisions of this Agreement. The methods of valuation are set out in a sequential order of application. The primary method for customs valuation is defined in Article 1 and imported goods are to be valued in accordance with the provisions of this Article whenever the conditions prescribed therein are fulfilled.

2. Where the customs value cannot be determined under the provisions of Article 1, it is to be determined by proceeding sequentially through the succeeding Articles to the first such Article under which the customs value can be determined. Except as provided in Article 4, it is only when the customs value cannot be determined under the provisions of a particular Article that the provisions of the next Article in the sequence can be used.

3. If the importer does not request that the order of Articles 5 and 6 be reversed, the normal order of the sequence is to be followed. If the importer does so request but it then proves impossible to determine the customs value under the provisions of Article 6, the customs value is to be determined under the provisions of Article 5, if it can be so determined.

4. Where the customs value cannot be determined under the provisions of Articles 1 to 6, inclusive, it is to be determined under the provisions of Article 7.

Use of generally accepted accounting principles

1. "Generally accepted accounting principles" refers to the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be disclosed and how it should be disclosed, and which financial statements should be prepared. These standards may be broad guidelines of general application as well as detailed practices and procedures.

2. For the purposes of this Agreement, the customs administration of each party shall utilize information prepared in a manner consistent with generally accepted accounting principles in the country which is appropriate for the Article in question. For example, the determination

of usual profit and general expenses under the provisions of Article 5 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of importation. On the other hand, the determination of usual profit and general expenses under the provisions of Article 6 would be carried out utilizing information prepared in a manner consistent with generally accepted accounting principles of the country of production. As a further example, the determination of an element provided for in Article 8.1(*b*)(ii) undertaken in the country of importation would be carried out utilizing information in a manner consistent with the generally accepted accounting principles of that country.

Note to Article 1

Price actually paid or payable

The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly. An example of an indirect payment would be the settlement by the buyer, whether in whole or in part, of a debt owed by the seller.

Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in Article 8, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the cutoms value.

The customs value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:

(*a*) charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;

(*b*) the cost of transport after importation;

(*c*) duties and taxes of the country of importation.

The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

Paragraph 1(a)(iii)

Among restrictions which would not render a price actually paid or payable unacceptable are restrictions which do not substantially

affect the value of the goods. An example of such restrictions would be the case where a seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

Paragraph 1(b)

If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for customs purposes. Some examples of this include:

(*a*) the seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities;

(*b*) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods;

(*c*) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semi-finished goods which have been provided by the seller on condition that he will receive a specified quantity of the finished goods.

However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in the country of importation shall not result in rejection of the transaction value for the purposes of Article 1. Likewise, if the buyer undertakes on his own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the customs value nor shall such activities result in rejection of the transaction value.

Paragraph 2

1. Paragraphs 2(*a*) and 2(*b*) provide different means of establishing the acceptability of a transaction value.

2. Paragraph 2(*a*) provides that where the buyer and the seller are related, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the customs value provided that the relationship did not influence the price. It is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the customs administration have no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer. For example, the customs administra-

tion may have previously examined the relationship, or it may already have detailed information concerning the buyer and the seller, and may already be satisfied from such examination or information that the relationship did not influence the price.

3. Where the customs administration is unable to accept the transaction value without further inquiry, it should give the importer an opportunity to supply such further detailed information as may be necessary to enable it to examine the circumstances surrounding the sale. In this context, the customs administration should be prepared to examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at, in order to determine whether the relationship influenced the price. Where it can be shown that the buyer and seller, although related under the provisions of Article 15, buy from and sell to each other as if they were not related, this would demonstrate that the price had not been influenced by the relationship. As an example of this, if the price had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way the seller settles prices for sales to buyers who are not related to him, this would demonstrate that the price had not been influenced by the relationship. As a further example, where it is shown that the price is adequate to ensure recovery of all costs plus a profit which is representative of the firm's overall profit realized over a representative period of time (e.g. on an annual basis) in sales of goods of the same class or kind, this would demonstrate that the price had not been influenced.

4. Paragraph 2(*b*) provides an opportunity for the importer to demonstrate that the transaction value closely approximates to a "test" value previously accepted by the customs administration and is therefore acceptable under the provisions of Article 1. Where a test under paragraph 2(*b*) is met, it is not necessary to examine the question of influence under paragraph 2(*a*). If the customs administration has already sufficient information to be satisfied, without further detailed inquiries, that one of the tests provided in paragraph 2(*b*) has been met, there is no reason for it to require the importer to demonstrate that the test can be met. In paragraph 2(*b*) the term "unrelated buyers" means buyers who are not related to the seller in any particular case.

Paragraph 2(b)

A number of factors must be taken into consideration in determining whether one value "closely approximates" to another value. These factors include the nature of the imported goods, the

nature of the industry itself, the season in which the goods are imported, and, whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply a uniform standard such as a fixed percentage, in each case. For example, a small difference in value in a case involving one type of goods could be unacceptable while a large difference in a case involving another type of goods might be acceptable in determining whether the transaction value closely approximates to the "test" values set forth in Article 1.2(*b*).

Note to Article 2

1. In applying Article 2, the customs administration shall, wherever possible, use a sale of identical goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of identical goods that takes place under any one of the following three conditions may be used:

(*a*) a sale at the same commercial level but in different quantities;

(*b*) a sale at a different commercial level but in substantially the same quantities; or

(*c*) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

(*a*) quantity factors only;

(*b*) commercial level factors only; or

(*c*) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purposes of Article 2, the transaction value of identical imported goods means a customs value, adjusted as provided for in paragraphs 1(*b*) and 2 of this Article, which has already been accepted under Article 1.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustments, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only identical imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price

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applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being *bona fide* through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions of Article 2 is not appropriate.

Note to Article 3

1. In applying Article 3, the customs administration shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. Where no such sale is found, a sale of similar goods that takes place under any one of the following three conditions may be used:

(*a*) a sale at the same commercial level but in different quantities;

(*b*) a sale at a different commercial level but in substantially the same quantities; or

(*c*) a sale at a different commercial level and in different quantities.

2. Having found a sale under any one of these three conditions adjustments will then be made, as the case may be, for:

(*a*) quantity factors only;

(*b*) commercial level factors only; or

(*c*) both commercial level and quantity factors.

3. The expression "and/or" allows the flexibility to use the sales and make the necessary adjustments in any one of the three conditions described above.

4. For the purpose of Article 3, the transaction value of similar imported goods means a customs value, adjusted as provided for in paragraphs 1(*b*) and 2 of this Article, which has already been accepted under Article 1.

5. A condition for adjustment because of different commercial levels or different quantities is that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities. As an example of this, if the imported goods being valued consist of a shipment of 10 units and the only similar imported goods for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the sellers' price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being *bona fide* through sales at other quantities. In the

absence of such an objective measure, however, the determination of a customs value under the provisions of Article 3 is not appropriate.

Note to Article 5

1. The term "unit price at which ____ goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sales take place.

2. As an example of this, goods are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1 to 10 units	100	10 sales of 5 units	65
		5 sales of 3 units	
11 to 25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units	80
		1 sale of 50 units	

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

3. As another example of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

4. A third example would be the following situation where various quantities are sold at various prices.

(*a*) *Sales*

Sale quantity:	*Unit price*
40 units	100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(*b*) *Totals*

Total quantity sold:	*Unit price*
65	90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is 90.

5. Any sale in the importing country, as described in paragraph 1 above, to a person who supplies directly or indirectly free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods any of the elements specified in Article 8.1(*b*), should not be taken into account in establishing the unit price for the purposes of Article 5.

6. It should be noted that "profit and general expenses" referred to in Article 5.1 should be taken as a whole. The figure for the purposes of this deduction should be determined on the basis of information supplied by or on behalf of the importer unless his figures are inconsistent with those obtaining in sales in the country of importation of imported goods of the same class or kind. Where the importer's figures are inconsistent with such figures, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the importer.

7. The "general expenses" include the direct and indirect costs of marketing the goods in question.

8. Local taxes payable by reason of the sale of the goods for which a deduction is not made under the provisions of Article 5.1(*a*)(*iv*) shall be deducted under the provisions of Article 5.1(*a*)(*i*).

9. In determining either the commissions or the usual profits and general expenses under the provisions of Article 5.1, the question whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis by reference to the circumstances involved. Sales in the country of importation of the narrowest group or range of imported goods of the same class or kind, which includes the goods being valued, for which the necessary information can be provided, should be examined. For the purposes of Article 5, "goods of the same class or kind" includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

10. For the purposes of Article 5.1(*b*), the "earliest date" shall be the date by which sales of the imported goods or of identical or similar imported goods are made in sufficient quantity to establish the unit price.

11. Where the method in Article 5.2 is used, deductions made for the value added by further processing shall be based on objective and quantifiable data relating to the cost of such work. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis of the calculations.

12. It is recognized that the method of valuation provided for in Article 5.2 would normally not be applicable when, as a result of the further processing, the imported goods lose their identity. However, there can be instances where, although the identity of the imported goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty. On the other hand, there can also be instances where the imported goods maintain their identity but form such a minor element in the goods sold in the country of importation that the use of this valuation method would be unjustified. In view of the above, each situation of this type must be considered on a case-by-case basis.

Note to Article 6

1. As a general rule, customs value is determined under this Agreement on the basis of information readily available in the country of importation. In order to determine a computed value, however, it may be necessary to examine the costs of producing the goods being valued and other information which has to be obtained from outside the country of importation. Furthermore, in most cases the producer of the goods will be outside the jurisdiction of the authorities of the country of importation. The use of the computed value method will generally be limited to those cases where the buyer and seller are related, and the producer is prepared to supply to the authorities of the country of importation the necessary costings and to provide facilities for any subsequent verification which may be necessary.

2. The "cost or value" referred to in Article 6.1(*a*) is to be determined on the basis of information relating to the production of the goods being valued supplied by or on behalf of the producer. It is to be based upon the commercial accounts of the producer, provided that such accounts are consistent with the generally accepted accounting principles applied in the country where the goods are produced.

3. The "cost or value" shall include the cost of elements specified in Article 8.1(*a*) (ii) and (iii). It shall also include the value, apportioned as appropriate under the provisions of the relevant note to Article 8, of any element specified in Article 8.1(*b*) which has been supplied directly or indirectly by the buyer for use in connexion with the production of the imported goods. The value of the elements specified in Article 8.1(*b*)(iv) which are undertaken in the country of importation shall be included only to the extent that such elements are charged to the producer. It is to be understood that no cost or value of the elements referred to in this paragraph shall be counted twice in determining the computed value.

4. The "amount for profit and general expenses" referred to in Article 6.1(*b*) is to be determined on the basis of information supplied by or

on behalf of the producer unless his figures are inconsistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation.

5. It should be noted in this context that the "amount for profit and general expenses" has to be taken as a whole. It follows that if, in any particular case, the producer's profit figure is low and his general expenses are high, his profit and general expenses taken together may nevertheless be consistent with that usually reflected in sales of goods of the same class or kind. Such a situation might occur, for example, if a product were being launched in the country of importation and the producer accepted a nil or low profit to offset high general expenses associated with the launch. Where the producer can demonstrate that he is taking a low profit on his sales of the imported goods because of particular commercial circumstances, his actual profit figures should be taken into account provided that he has valid commercial reasons to justify them and his pricing policy reflects usual pricing policies in the branch of industry concerned. Such a situation might occur, for example, where producers have been forced to lower prices temporarily because of an unforseeable drop in demand, or where they sell goods to complement a range of goods being produced in the country of importation and accept a low profit to maintain competitivity. Where the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to the country of importation, the amount for profit and general expenses may be based upon relevant information other than that supplied by or on behalf of the producer of the goods.

6. Where information other than that supplied by or on behalf of the producer is used for the purposes of determining a computed value, the authorities of the importing country shall inform the importer, if the latter so requests, of the source of such information, the data used and the calculations based upon such data, subject to the provisions of Article 10.

7. The "general expenses" referred to in Article 6.1(*b*) covers the direct and indirect costs of producing and selling the goods for export which are not included under Article 6.1(*a*).

8. Whether certain goods are "of the same class or kind" as other goods must be determined on a case-by-case basis with reference to the circumstances involved. In determining the usual profits and general expenses under the provisions of Article 6, sales for export to the country of importation of the narrowest group or range of goods, which includes the goods being valued, for which the neces-

sary information can be provided, should be examined. For the purposes of Article 6, "goods of the same class or kind" must be from the same country as the goods being valued.

Note to Article 7

1. Customs values determined under the provisions of Article 7 should, to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under Article 7 should be those laid down in Article 1 to 6, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of Article 7.

3. Some examples of reasonable flexibility are as follows:

(*a*) *Identical goods*—the requirement that the identical goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of Article 5 and 6 could be used.

(*b*) *Similar goods*—the requirement that the similar goods should be exported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of Article 5 and 6 could be used.

(*c*) *Deductive method*—the requirement that the goods shall have been sold in the "condition as imported" in Article 5.1(*a*) could be flexibly interpreted; the "ninety days" requirement could be administered flexibly.

Note to Article 8

Paragraph 1 (a)(i)

The term "buying commissions" means fees paid by an importer to his agent for the service of representing him abroad in the purchase of the goods being valued.

Paragraph 1 (b)(ii)

1. There are two factors involved in the apportionment of the elements specified in Article 8.1(*b*)(ii) to the imported goods—the value of the element itself and the way in which that value is to be apportioned to the imported goods. The apportionment of these elements

should be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles.

2. Concerning the value of the element, if the importer acquires the element from a seller not related to him at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to him, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

3. Once a value has been determined for the element, it is necessary to apportion that value to the imported goods. Various possibilities exist. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on the entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced up to the time of the first shipment. As a further example, he may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. The method of apportionment used will depend upon the documentation provided by the importer.

4. As an illustration of the above, an importer provides the producer with a mould to be used in the production of the imported goods and contracts with him to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request the customs administration to apportion the value of the mould over 1,000 units, 4,000 units or 10,000 units.

Paragraph 1(b)(iv)

1. Additions for the elements specified in Article 8.1(*b*)(iv) should be based on objective and quantifiable data. In order to minimize the burden for both the importer and customs administration in determining the values to be added, data readily available in the buyer's commercial record system should be used in so far as possible.

2. For those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

3. The ease with which it may be possible to calculate the values to be added will depend on a particular firm's structure and management practice, as well as its accounting methods.

4. For example, it is possible that a firm which imports a variety of products from several countries maintains the records of its design centre outside the country of importation in such a way as to show accurately the costs attributable to a given product. In such cases, a direct adjustment may appropriately be made under the provisions of Article 8.

5. In another case, a firm may carry the cost of the design centre outside the country of importation as a general overhead expense without allocation to specific products. In this instance, an appropriate adjustment could be made under the provisions of Article 8 with respect to the imported goods by apportioning total design centre costs over total production benefiting from the design centre and adding such apportioned cost on a unit basis to imports.

6. Variations in the above circumstances will, of course, require different factors to be considered in determining the proper method of allocation.

7. In cases where the production of the element in question involves a number of countries and over a period of time, the adjustment should be limited to the value actually added to that element outside the country of importation.

Paragraph 1(c)

1. The royalties and licence fees referred to in Article 8.1(*c*) may include, among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall be not added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods.

Paragraph 3

Where objective and quantifiable data do not exist with regard to the additions required to be made under the provisions of Article 8, the transaction value cannot be determined under the provisions of Article 1. As an illustration of this, a royalty is paid on the basis of the price in a sale in the importing country of a litre of a particular product that was imported by the kilogram and made up into a solution after importation. If the royalty is based partially on the imported goods and partially on other factors which have nothing to do with the imported goods (such as when the imported goods are mixed with domestic in-

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gredients and are no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported goods and can be readily quantified, an addition to the price actually paid or payable can be made.

Note to Article 9

For the purposes of Article 9, "time of importation" may include the time of entry for customs purposes.

Note to Article 11

1. Article 11 provides the importer with the right to appeal against a valuation determination made by the customs administration for the goods being valued. Appeal may first be to a higher level in the customs administration, but the importer shall have the right in the final instance to appeal to the judiciary.

2. "Without penalty" means that the importer shall not be subject to a fine or threat of fine merely because he chose to exercise his right of appeal. Payment of normal court costs and lawyers' fees shall not be considered to be a fine.

3. However, nothing in Article 11 shall prevent a Party from requiring full payment of assessed customs duties prior to an appeal.

Note to Article 15

Paragraph 4

For the purposes of this Article, the term "persons" includes legal persons, where appropriate.

Paragraph 4(e)

For the purposes of this Agreement, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

Annex II

TECHNICAL COMMITTEE ON CUSTOMS VALUATION

1. In accordance with Article 18 of this Agreement, the Technical Committee shall be established under the auspices of the Customs Co-operation Council with a view, at the technical level, towards uniformity in interpretation and application of this Agreement.

2. The responsibilities of the Technical Committee shall include the following:

(*a*) to examine specific technical problems arising in the day-to-day administration of the customs valuation system of Parties and to give advisory opinions on appropriate solutions based upon the facts presented;

(*b*) to study, as requested, valuation laws, procedures and practices as they relate to this Agreement and to prepare reports on the results of such studies;

(*c*) to prepare and circulate annual reports on the technical aspects of the operation and status of this Agreement;

(*d*) to furnish such information and advice on any matters concerning the valuation of imported goods for customs purposes as may be requested by any Party or the Committee. Such information and advice may take the form of advisory opinions, commentaries or explanatory notes;

(*e*) to facilitate, as requested, technical assistance to Parties with a view to furthering the international acceptance of this Agreement; and

(*f*) to exercise such other responsibilities as the Committee may assign to it.

General

3. The Technical Committee shall attempt to conclude its work on specific matters, especially those referred to it by Parties or the Committee, in a reasonably short period of time.

4. The Technical Committee shall be assisted as appropriate in its activities by the Secretariat of the Customs Co-operation Council.

Representation

5. Each Party shall have the right to be represented on the Technical Committee. Each Party may nominate one delegate and one or more alternates to be its representatives on the Technical Committee. Such a Party so represented on the Technical Committee is hereinafter referred to as a member of the Technical Committee. Representatives of members of the Technical Committee may be assisted by advisers. The GATT secretariat may also attend such meetings with observer status.

6. Members of the Customs Co-operation Council who are not Parties may be represented at meetings of the Technical Committee by one delegate and one or more alternates. Such representatives shall attend meetings of the Technical Committee as observers.

7. Subject to the approval of the Chairman of the Technical Committee, the Secretary-General of the Customs Co-operation Council (hereinafter referred to as "the Secretary-General") may invite representatives of governments which are neither Parties nor members of the Customs Co-operation Council and representatives of inter-

national governmental and trade organizations to attend meetings of the Technical Committee as observers.

8. Nominations of delegates, alternates and advisers to meetings of the Technical Committee shall be made to the Secretary-General.

Technical Committee meetings

9. The Technical Committee shall meet as necessary but at least two times a year. The date of each meeting shall be fixed by the Technical Committee at its preceding session. The date of the meeting may be varied either at the request of any member of the Technical Committee concurred in by a simple majority of the members of the Technical Committee or, in cases requiring urgent attention, at the request of the Chairman.

10. The meetings of the Technical Committee shall be held at the headquarters of the Customs Co-operation Council unless otherwise decided.

11. The Secretary-General shall inform all members of the Technical Committee and those included under paragraphs 6 and 7 at least thirty days in advance, except in urgent cases, of the opening date of each session of the Technical Committee.

Agenda

12. A provisional agenda for each session shall be drawn up by the Secretary-General and circulated to the members of the Technical Committee and to those included under paragraphs 6 and 7 at least thirty days in advance of the session, except in urgent cases. This agenda shall comprise all items whose inclusion has been approved by the Technical Committee during its preceding session, all items included by the Chairman on his own initiative, and all items whose inclusion has been requested by the Secretary-General, by the Committee or by any member of the Technical Committee.

13. The Technical Committee shall determine its agenda at the opening of each session. During the session the agenda may be altered at any time by the Technical Committee.

Officers and conduct of business

14. The Technical Committee shall elect from among the delegates of its members a Chairman and one or more Vice-Chairmen. The Chairman and Vice-Chairmen shall each hold office for a period of one year. The retiring Chairman and Vice-Chairmen are eligible for re-election. A Chairman or Vice-Chairman who ceases to represent a member of the Technical Committee shall automatically lose his mandate.

15. If the Chairman is absent from any meeting or part thereof, a Vice-Chairman shall preside. In that event, the latter shall have the same powers and duties as the Chairman.

16. The Chairman of the meeting shall participate in the proceedings of the Technical Committee as such and not as the representative of a member of the Technical Committee.

17. In addition to exercising the powers conferred upon him elsewhere by these rules, the Chairman shall declare the opening and closing of each meeting, direct the discussion, accord the right to speak, and, pursuant to these rules, have control of the proceedings. The Chairman may also call a speaker to order if his remarks are not relevant.

18. During discussion of any matter a delegation may raise a point of order. In this event, the Chairman shall immediately state his ruling. If this ruling is challenged, the Chairman shall submit it to the meeting for decisions and it shall stand unless overruled.

19. The Secretary-General, or officers of the Secretariat designated by him, shall perform the secretarial work of meetings of the Technical Committee.

Quorum and voting

20. Representatives of a simple majority of the members of the Technical Committee shall constitute a quorum.

21. Each member of the Technical Committee shall have one vote. A decision of the Technical Committee shall be taken by a majority comprising at least two thirds of the members present. Regardless of the outcome of the vote on a particular matter, the Technical Committee shall be free to make a full report to the Committee and to the Customs Co-operation Council on that matter indicating the different views expressed in the relevant discussions.

Languages and records

22. The official languages of the Technical Committee shall be English, French and Spanish. Speeches or statements made in any of these three languages shall be immediately translated into the other official languages unless all delegations agree to dispense with translation. Speeches or statements made in any other language shall be translated into English, French and Spanish, subject to the same conditions, but in that event the delegation concerned shall provide the translation into English, French or Spanish. Only English, French and Spanish shall be used for the official documents of the Technical Committee. Memoranda and correspondence for the consideration of the Technical Committee must be presented in one of the official languages.

23. The Technical Committee shall draw up a report of all its sessions and, if the Chairman considers it necessary, minutes or summary records of its meetings. The Chairman or his designee shall report on the work of the Technical Committee at each meeting of the Committee and at each meeting of the Customs Co-operation Council.

ANNEX III

AD HOC PANELS

1. Ad hoc panels established by the Committee under this Agreement shall have the following responsibilities:

(*a*) to examine the matter referred to it by the Committee;

(*b*) to consult with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution; and

(*c*) to make a statement concerning the facts of the matter as they relate to the application of the provisions of this Agreement and, make such findings as will assist the Committee in making recommendations or giving rulings on the matter.

2. In order to facilitate the constitution of panels, the Chairman of the Committee shall maintain an informal indicative list of government officials knowledgeable in the area of customs valuation and experienced in the field of trade relations and economic development. This list may also include persons other than government officials. In this connexion, each Party shall be invited to indicate at the beginning of every year to the Chairman of the Committee the name(s) of the one or two governmental experts whom the Parties would be willing to make available for such work. When a panel is established, the Chairman, after consultation with the Parties concerned, shall, within seven days of such establishment propose the composition of the panel consisting of three or five members and preferably government officials. The Parties directly concerned shall react within seven working days to nominations of panel members by the Chairman and shall not oppose nominations except for compelling reasons.

Citizens of countries whose governments are parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. Panel members shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a panel.

3. Each panel shall develop its own working procedures. All Parties having a substantial interest in the matter and having notified this to

the Committee shall have an opportunity to be heard. Each panel may consult and seek information and technical advice from any source it deems appropriate. Before a panel seeks such information or technical advice from a source within the jurisdiction of a Party, it shall inform the government of that Party. Any Party shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be disclosed without the specific permission of the person or government providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the person or government providing the information, will be provided.

4. Where the parties to the dispute have failed to reach a satisfactory solution the panel shall submit its findings in writing. The report of a panel should normally set out the rationale behind its findings. Where a settlement of the matter is reached between the parties, the report of the panel may be confined to a brief description of the dispute and to a statement that a solution has been reached.

5. Panels shall use such report of the Technical Committee as may have been issued under Article 20.4 of this Agreement as the basis for their consideration of issues that involve questions of a technical nature.

6. The time required by panels will vary with the particular case. They should aim to deliver their findings, and where appropriate, recommendations, to the Committee without undue delay, normally within a period of three months from the date that the panel was established.

7. To encourage development of mutually satisfactory solutions between the parties to a dispute and with a view to obtaining their comments, each panel should first submit the descriptive part of its report to the Parties concerned, and should subsequently submit to the parties to the dispute its conclusions, or an outline thereof, a reasonable period of time before they are circulated to the Parties.

PART 2.—TRADE AGREEMENT WITH SWITZERLAND ENTERED INTO ON DECEMBER 18 AND DECEMBER 21, 1979

DÉLÉGATION SUISSE,
AUPRÉS DES ORGANISATIONS
ÉCONOMIQUES INTERNATIONALES,
December 18, 1979.

[By express mail]

MR. WILLIAM B. KELLY, Jr.,
Associate STR, c/o Permanent Mission, of the United States, Economic Department, Rue de Lausanne 80.

DEAR MR. KELLY: Referring to our recent discussions and negotiations in Washington and Geneva in the context of the Tokyo Round concerning the treatment of non-competitive ASP chemicals in the U.S. Tariff Schedule XX, I have the honor to confirm the following agreement:

(1) The United States will break a special item out of item 410.22 in its Schedule XX to cover the following products:

mordant black, 75
mordant brown, 79
mordant red, 81
mordant red, 84
mordant blue, 1

for which the final rate of duty would be 9 percent.

(2) In return, Switzerland will make the following additional tariff cuts to be added to its Schedule LIX, notified as being of special interest to the United States:

-3701.20	Fr. 8.-
-3702.20	Fr. 8.-
-3703.10	Fr. 6.-

The staging of these additional reductions will be operated in parallel with the corresponding reductions in the U.S. Tariff Schedule, mentioned under para. 1 above.

Yours sincerely,

DR. B. EBERHARD,
Deputy Head of the Swiss Delegation to the MTN.

OFFICE OF THE SPECIAL REPRESENTATIVE
FOR TRADE NEGOTIATIONS,
EXECUTIVE OFFICE OF THE PRESIDENT,
Washington, D.C., December 21, 1979.

DR. BALZ EBERHARD,
Deputy Head of the Swiss Delegation to the MTN,
Brundeshaus Ost, 3003 Berne, Switzerland

DEAR DR. EBERHARD: I am happy to acknowledge your letter of 18 December 1979 as follows:

"DEAR MR. KELLY: Referring to our recent discussions and negotiations in Washington and Geneva in the context of the Tokyo Round concerning the treatment of non-competitive ASP chemicals in the U.S. Tariff Schedule XX, I have the honor to confirm the following agreement:

(1) The United States will break a special item out of item 410.22 in its Schedule XX to cover the following products:

mordant black, 75
mordant brown, 79
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-3701.20	Fr. 8.-
-3702.20	Fr. 8.-
-3703.10	Fr. 6.-

"The staging of these additional reductions will be operated in parallel with the corresponding reductions in the U.S. Tariff Schedule, mentioned under para. 1 above.

Yours sincerely,

DR. B. EBERHARD,
Deputy Head of the Swiss
Delegation to the MTN."

I confirm that the United States accepts the agreement as proposed in your letter of 18 December 1979.

Sincerely yours,

WILLIAM B. KELLY, JR.,
Associate Special Trade Representative.

326-864 O - 6

PART 3.—TRADE AGREEMENTS WITH THE EUROPEAN COMMUNITIES (INCLUDING THE EUROPEAN ECONOMIC COMMUNITY) ENTERED INTO ON DECEMBER 21, 1979, ON DECEMBER 27, 1979, AND ON JANUARY 2, 1980

DECEMBER 21, 1979.

TO THE DIRECTOR-GENERAL,
General Agreement on Tariffs and Trade, Geneva.

Negotiations Relating to Schedule XX—United States

There shall be withdrawn from Schedule XX existing concessions on the two items listed in the attached annex, which were initially negotiated with the European Economic Communities or in which the European Economic Communities has a principal supplying interest. The improved concessions on the two items, which are shown in the Annex, will be substituted for the concessions withdrawn through a rectification of Schedule XX annexed to the Geneva (1979) Protocol. Implementation of these conversions and concessions shall be at the stages and under the conditions specified in the Protocol, as amended by this agreement.

ARMIN DIVUL
On behalf of the European Economic Communities

ROBERT HERMATS
On behalf of the United States of America.

ANNEX

[In percent]

Tariff No.	Short description	Current rates of duty	Base rate	Final rate	1st stage reduction
[1] 445.5010	Polypropylene resins	1.3¢ per lb. + 10% ad. val.	15.7	12.5	14.5
626.02	Unwrought zinc; other than alloys of zinc.	0.7¢ per lb	2.0	1.5	

[1] New item 445.52

ACCELERATION OF STAGING FOR ITEM 413.30 OF SCHEDULE XX (UNITED STATES OF AMERICA)

Pursuant to the Memorandum of Discussions of December 11, 1979, between the United States and the Commission of the European Communities, the United States, hereby, agrees to amend the implementation of its concession on Item 413.30 from 8 equal stages, pursuant to Part 3 C of Annex 1 to Schedule XX of the United States of America, to the following rates of duty, which shall become effective as listed below:

For Item 413.30, the rate of duty (percent ad valorem) for Stage 1 is 26.8, Stage 2 is 23.8, Stage 3 is 21.8, Stage 4 is 19.8, Stage 5 is 17.8, Stage 6 is 15.8, Stage 7 is 13.9, and Stage 8 is 11.9.

All other provisions of the Geneva (1979) protocol, including Part 3 C of Annex 1 to Schedule XX, (United States), shall remain in force.

In connection with the agreement set out above to accelerate tariff reductions on certain items it had notified under Section 225 of the Trade Agreements Act of 1979, the Commission intends to pursue discussions with the Office of the U.S. Trade Representative early in 1980 on the remaining items mentioned in the Memorandum of Discussions dated 11 December 1979.

Done in Brussels this 27th day of December, 1979,

For the United States
JOHN T. MCCARTHY.

For the Commission of the European Communities
RODERICK ABBOTT.

JANUARY 2, 1980.

Negotiations Relating to Schedule XX—United States

TO THE DIRECTOR-GENERAL,
General Agreement on Tariffs and Trade,
Geneva.

The existing concessions in Schedule XX on the two items listed in the attached annex shall be improved to the final rate shown in the annex. The improved concessions are made pursuant to the resolution of the US/EC Article XXVIII negotiation on certain woolen fabrics. Implementation of these concessions shall be at the stages and under the conditions specified in the Protocol as amended by this agreement.

On behalf of the European Economic Communities.

On behalf of the United States of America.

ANNEX

[In percent]

Tariff No.	Short description	Base rate of duty	Final rate
337.20	Woven fabrics wholly of silk not jacquard-figured	11	5
337.40	Woven fabrics wholly of silk jacquard figured	10.5	5

STAGING

	1980	1981	1982	1983 (percent)
337.20	10.4	8	6.5	5
337.40	9.9	8	6.5	5

PART 4.—TRADE AGREEMENT WITH THE DOMINICAN REPUBLIC ENTERED INTO ON JANUARY 2, 1979

[Translation]

DEPARTMENT OF STATE,
DIVISION OF LANGUAGE SERVICES,
December 21, 1979.

(No. 5145)

CENTRO DOMINICANO DE PROMOCION DE EXPORTACIONES
[*Dominican Center for Promotion of Exports*],
Plaza de la Independencia,
Santo Domingo, Dominican Republic.

Mr. MICHAEL H. GOLDMAN,
Adviser for Economic and Trade Affairs,
Embassy of the United States of America.

DEAR MR. GOLDMAN: This letter concerns the multinational negotiations (MTN) and the agreement concluded by the Governments of the Dominican Republic and the United States of America in the context of the MTN.

The Dominican Government is aware that the United States Government agreed to make greater efforts to reduce the import tariffs imposed on a number of products for which the Dominican Republic is a major supplier to the United States market. The list of such products includes:

Description:	TSUSA
Papaya fruit paste	152.65
Ginger root	161.37
Amber	188.30
Leather, nspf	791.25

The United States Government has now offered to increase its offer to include a 40 percent reduction in import tariffs on cigars with a value greater than $0.15 per unit. If this reduction in import tariffs on cigars (TSUSA 170.66) is achieved, the Dominican Government agrees not to seek an adjustment of offers if the above-mentioned products, for which the Dominican Republic is a major supplier, are not subject to the reduction of import tariffs agreed to previously by the United States Government.

Without further remarks, I remain,

Sincerely,

LUIS ALVAREZ RENTA,
Executive Director.

EMBASSY OF THE UNITED STATES OF AMERICA,
Santo Domingo, D.N., January 2, 1980.

Lic. LUIS ALVAREZ RENTA,
Director, Centro Dominicano de Promoción de Exportaciones (CEDOPEX), Plaza de la Independencia Ciudad.

DEAR LIC. ALVAREZ: This is to acknowledge receipt of your letter No. 5145 dated December 21, 1979 in which you indicated that in exchange for a reduction of 40% in the U.S. import duty applicable to cigars valued at over $0.15 each (TSUSA 170.66), the Government of the Dominican Republic agrees not to seek adjustment if U.S. duties are not reduced on the following products in the context of the multilateral trade negotiations (MTN):

Description:	*TSUSA*
Papaya paste	152.65
Ginger	161.37
Amber	188.30
Leather, nesp	791.25

The Government of the United States is prepared to offer a 40% reduction if its import duty, staged over time, on TSUSA 170.66 on the basis of the understanding described in your letter as indicated above, provided that the Government of the Dominican Republic includes TSUSA 137.10 (peppers, fresh, chilled or frozen) in which the Dominican Republic is a substantial supplier to the United States, in the list of products for which the Dominican Government will not seek adjustment if U.S. duties are not reduced in the context of the MTN.

This letter and your acknowledgement, together with your letter No. 5145 dated December 21, 1979, will constitute an Agreement between our respective countries.

Sincerely,

MICHAEL H. GOLDMAN,
Economic/Commercial Counselor.

[LS No. 95085–B]

January 2, 1980.

(No. 11)

CENTRO DOMINICANO DE PROMOCION DE EXPORTACIONES
[*Dominican Center for Promotion of Exports*],
Plaza de la Independencia,
Santo Domingo, Dominican Republic.

Mr. MICHAEL H. GOLDMAN,
Economic and Trade Adviser, Embassy of the United States of America, Santo Domingo, Dominican Republic.

DEAR MR. GOLDMAN: I hereby acknowledge receipt of your letter dated January 2, 1980, concerning the agreement between the Governments of the Dominican Republic and the United States of America in the context of the multilateral trade negotiations (MTN).

The Dominican Government agrees to include TSUSA 137.10 on the list of products contained in my letter No. 5145 dated December 21, 1979. The Dominican Republic is an important supplier of those products to the United States. The Dominican Government will not seek an adjustment of offers if those products are not subject to a reduction of import tariffs by the United States Government, provided that import tariffs under TSUSA 170.66 on cigars with a value greater than 15 cents each are reduced in stages within the context of the MTN to a total of 40 percent.

This letter together with my letter No. 5145 dated December 21, 1979, and your reply of January 2, 1980, shall constitute an agreement between our two countries.

Sincerely,

LUIS ALVAREZ RENTA,
Executive Director.

PART 5.—TRADE AGREEMENT WITH INDONESIA ENTERED INTO ON DECEMBER 20, AND 29, 1979

JAKARTA, INDONESIA, *December 20, 1979.*

DARRY SALIM,
Director for International Trade Relations,
Department of Trade, Jakarta, Indonesia

DEAR MR. SALIM: I have the honor to refer to the U.S.-Indonesian Memorandum of Understanding on the Multilateral Trade Negotiations.

I have been informed that the U.S. International Trade Commission views as inadequate the "p.m." designation under current and offered duties on hand painted batik. In order to preserve the Presidential authority to institute reduction on batik of the order of magnitude envisaged after January 3, 1980, it is necessary to include a specific figure.

Therefore, I am requesting your agreement to amend the text of the Memorandum of Understanding signed November 29, 1979. Such amendment would consist of the deletion of the phrase, repeated twice, quote p.m. unquote following the item ex numerous—hand painted batik and the insertion of the phrase quote subject to 50 percent tariff reduction unquote. Accordingly, the item would now read quote ex numerous—hand painted batik (subject to 50 percent tariff reduction and subject to whether a determination can be made to distinguish between hand painted and machine painted batik, and, if so, the adoption of a mutually satisfactory certification system by Indonesia).

In order to meet the U.S. statutory deadline I will need to receive your response as soon as possible but in no event no later than December 30, 1979.

Sincerely,

HENRY BARDACH,
Counselor for Economic
and Commercial Affairs.

REPUBLIK INDONESIA,
DEPARTEMEN PERDAGANGAN DAN KOPERASI,
Jakarta, December 27, 1979.

MR. HENRY BARDACH,
Counselor for Economic and Commercial Affairs, the Embassy of the United States of America, Jakarta.

DEAR MR. BARDACH: I have the honor to refer to the US-Indonesian Memorandum of Understanding on the Multilateral Trade Negotia-

tions (MTN). I understand that in order for your Government to retain its statutory authority to reduce tariffs on hand-painted batiks of interest to Indonesia it is necessary to amend the text of that Memorandum of Understanding. Such amendment would consist of the deletion of the phrase p.m. following the item ex numerous—hand-painted bariks and the insertion of the phrase subject to 50 percent tariff reduction.

Accordingly, the item would now read: ex numerous—hand painted-batiks (subject to 50 percent tariff reduction and subject to whether a determination can be made to distinguish between hand-painted and machine-painted batik, and, if so, the adoption of a mutually satisfactory certification system by Indonesia).

I further have the honor to inform you that such an amendment is acceptable to my Government.

Thank you for your kind attention.

Sincerely yours,

DARRY SALIM,
Director for External Trade Relations,
Department of Trade and Cooperatives.

326-864 O - 7

(T.D. 80–219)

Cotton and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton and manmade fiber textile products manufactured or produced in India

There is published below a directive of July 22, 1980, received by the Commissioner of Customs from the chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton and manmade fiber textile products in categories 335 and 641 manufactured or produced in India. This directive amends, but does not cancel, that committee's directive of December 21, 1979 (T.D. 80–58).

This directive was published in the Federal Register on July 25, 1980 (45 F.R. 49632), by the committee.

(QUO–2–1)

Dated: August 26, 1980.

WILLIAM D. SLYNE
(For Richard R. Rosettie, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., July 22, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive issued to you on December 21, 1979, by the chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and manmade fiber textile products, produced or manufactured in India.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you

are directed to prohibit, effective on July 25, 1980, and for the 12-month period beginning on January 1, 1980, and extending through December 31, 1980, entry into the United States for consumption, and withdrawal from warehouse for consumption, of textile products in categories 335 and 641 in excess of the following adjusted levels of restraint:

Category	*Adjusted 12-month levels of restraint* [1]
335	24,213 dozen
641	68,966 dozen

The actions taken with respect to the Government of India and with respect to imports of cotton and manmade fiber textile products from India have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 80-220)

Cotton, Wool, and Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton, wool, and manmade fiber textile products manufactured or produced in the People's Republic of China

There is published below a directive of August 1, 1980, received by the Commissioner of Customs from the acting chairman, Committee for the Implementation of Textile Agreements, announcing export visa requirements for cotton, wool, and manmade fiber textile products manufactured or produced in the People's Republic of China.

This directive was published in the Federal Register on August 5, 1980 (45 F.R. 51872), by the committee.

(QUO-2-1)

Dated: August 26, 1980.

WILLIAM D. SLYNE
(For Richard R. Rosettie, Acting Director, Duty Assessment Division).

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[1] The levels of restraint have not been adjusted to reflect any imports after Dec. 31, 1979.

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., August 1, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on August 20, 1980, and until further notice, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and manmade fiber textile products in categories 300–369, 400–469, and 600–669, produced or manufactured in the People's Republic of China and exported on and after August 20, 1980, from the People's Republic of China or from any other country of exportation, for which the Government of the People's Republic of China has not issued an appropriate export visa, fully described below. Merchandise exported before August 20, 1980, shall be permitted entry without a visa until October 6, 1980.

The export visa will be an original circular stamp in blue ink on the front of the invoice (Special Customs invoice form 5515, successor document, or commercial invoice, when that form is used) and will be signed by an authorized official of the Government of the People's Republic of China. A facsimile of the visa stamp is enclosed.

Merchandise for the personal use of the importer and not for resale does not require a visa, regardless of value.

You are further directed to permit entry into the United States for consumption and withdrawal from warehouse for consumption of designated shipments of cotton, wool, and/or manmade fiber textile products, produced or manufactured in the People's Republic of China, notwithstanding the designated shipment or shipments do not fulfill the aforementioned visa requirements, whenever requested to do so in writing by the Chairman of the Committee for the Implementation of Textile Agreements.

A detailed description of the textile categories in terms of TSUSA numbers was published in the Federal Register on February 28, 1980 (45 F.R. 13172), as amended on April 23, 1980 (45 F.R. 27463).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of the People's Republic of China and with respect to imports of cotton, wool, and manmade fiber textiles and textile products from China has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

Enclosure.

VISA STAMP FOR COTTON, WOOL AND MAN-MADE FIBER TEXTILE PRODUCTS EXPORTED TO THE UNITED STATES

U.S. Customs Service

General Notice

(063419)

American Manufacturer's Petition

Notice of receipt of American manufacturer's petition to classify speedometers and odometers used on "exercisers"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of American manufacturer's petition.

SUMMARY: Customs has received a petition from an American manufacturer requesting the classification of speedometers and odometers used on exercisers (stationary exercise cycles) under the provision for bicycle speedometers, rather than under the provisions for other parts of bicycles, or for other revolution counters, or for sport, gymnastic, athletic, or playground equipment and parts thereof.

DATES: Interested parties may comment on this petition, and comments (preferably in triplicate) must be received on or before 30 days from the date of publication in the Federal Register.

ADDRESS: Comments may be addressed to the Commissioner of Customs, attention: Regulations and Research Division, room 2426, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Simon Cain, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–5727.

SUPPLEMENTARY INFORMATION:

BACKGROUND

A petition has been filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), by an American manufacturer of speedometers for use on bicycles and exercisers. The petitioner contends that speedometers and odometers used on exercisers should be

classifiable under the provision for bicycle speedometers in item 711.93, Tariff Schedules of the United States (TSUS), rather than under the provision for parts of bicycles in item 732.42, TSUS, or under the provision for revolution counters or other speedometers in item 711.98, TSUS, or under the provision for sport, gymnastic, athletic, or playground equipment and parts thereof in item 735.20, TSUS.

Speedometers of a type chiefly used on exercisers, such as double-gear, hub-drive speedometers constructed so that the drive chain is attached to the righthand side of the front wheel are classifiable as other speedometers in item 711.98, TSUS. However, speedometers of a type chiefly used on bicycles, such as standard single-gear, are classifiable as bicycle speedometers in item 711.93, TSUS.

COMMENTS

Pursuant to section 175.21(a) of the Customs Regulations (19 CFR 175.21(a)), the Customs Service invites written comments on this petition from all interested parties.

The American manufacturer's petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with sections 103.8(b) and 175.21(b) of the Customs Regulations (19 CFR 103.8(b), 175.21(b)) during regular business hours at the Regulations and Research Division, Headquarters, U.S. Customs Service, room 2426, 1301 Constitution Avenue NW., Washington, D.C. 20229.

AUTHORITY

This notice is published in accordance with section 175.21(a), of the Customs Regulations (19 CFR 175.21(a)).

Dated: July 31, 1980.

SALVATORE E. CARAMAGNO
(For Donald W. Lewis, Director,
Office of Regulations and Rulings).

U.S. Customs Service

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

The following are decisions made by the U.S. Customs Service where the issues involved are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

Dated: August 19, 1980.

JOHN T. ROTH
(For Director, Office of
Regulations and Rulings).

(C.S.D. 80–151)

Generalized System of Preferences: Substantial Transformation in Beneficiary Developing Country

Date: August 17, 1979
File: R:CV:S JLV
055691

This ruling concerns those costs of materials and direct costs of processing operations which are includable in determining whether extension cord sets, produced in Mexico from foreign materials, qualify for duty-free treatment under the Generalized System of Preferences (GSP).

Issues.—(1) Are any of the component materials of extension cord sets materials produced in Mexico within the meaning of section 503(b)(2)(A)(i), Trade Act of 1974 (19 U.S.C. 2463(b)(2)(A)(i)), and section 10.177(a)(2), Customs Regulations (19 CFR 10.177 (a)(2))?

(2) Are the costs of assembling the component materials into extension cord sets direct costs of processing operations within the meaning of section 502(b)(2)(A)(ii), Trade Act of 1974 (19 U.S.C.

2463(b)(2)(A)(ii)), and section 10.178(a), Customs Regulations (19 CFR 10.178(a))?

Facts.—Extension cord sets would be manufactured in Mexico from the following materials imported into Mexico from the United States: bunched copper wire imported on large reels; vinyl extrusion compound, vinyl molding compound, and styrene molding compound imported in the form of pellets; plug cap blades and connector contacts cut to shape and form and imported on continuous rolls; and safety caps. These materials would be processed to form extension cord sets.

First, the copper wire would be covered by extrusion of the vinyl extrusion compound so as to form vinyl-covered (insulated) wire. The insulated wire would be wound into 50,000-foot reels. The insulated wire would then be cut to specific lengths and the ends would be stripped of the insulation in preparation for the contacts and blades.

Metal contacts and blades would be crimped onto the exposed wire ends of each cord length. Vinyl pellets would then be injection molded to form a cap on the blade end (male end) of each cord and styrene pellets would be injection molded to form a connector service block on the connector end (female end) of each cord. Finally, a safety cap would be assembled onto each connector service block to form completed extension cord sets.

Law and analysis.—Insulated electrical conductors fitted with connectors and classifiable under item 688.15, Tariff Schedules of the United States, are eligible for duty-free treatment under the GSP and may be entered free of duty from Mexico if they otherwise qualify. One of the requirements for such entry under the GSP is that the sum of (1) the cost or value of materials produced in the beneficiary developing country (BDC) plus (2) the direct costs of processing operations in that BDC must be not less than 35 percent of the appraised value of the eligible article at the time of its entry into the customs territory of the United States. See section 503(b)(2)(A) of the Trade Act of 1974.

Under the proposed operation, all the materials used to produce the extension cords would be imported into Mexico from the United States. Therefore, the value of such materials will not be includable in the 35-percent requirement for the cords unless the materials are substantially transformed in Mexico into new and different articles of commerce prior to being used in the production of the cords. See section 10.177(a)(2) of the Customs Regulations. That is, the imported materials must be processed into intermediate products which are themselves articles of commerce distinct from the materials as imported and which are constituent materials used in the subsequent production of the GSP-eligible articles.

The plug blades, connector contacts, and safety caps are not processed into new and different articles of commerce prior to being assembled into the eligible article. They are assembled in their condition as imported into the extension cord sets. Therefore, the costs of these materials are not includable in the 35-percent value-added requirement for the extension cord sets.

The injection molding of the vinyl and styrene pellets into plug and connector housings results in a substantial transformation of those materials. However, the issue is whether they are transformed into new and different articles of commerce which become constituent materials used in the manufacture of the extension cord sets. It is the opinion of the Customs Service that they are not. Therefore, the costs of the plastic materials are not includable in the 35-percent value-added requirement for the extension cord sets.

Although the molding of the plastics is a manufacture of the plastics, the resulting vinyl plug or connector housings are not in fact independent intermediate products. They never exist apart from the eligible article. Therefore, they are not substantially transformed constituent materials for the purposes of the GSP.

The extrusion of the vinyl pellets over the copper wire to produce insulated copper wire is a processing operation which results in a new and different article of commerce. The resulting insulated wire is distinct from the imported plastic and wire materials, and it is a constituent material used in the production of the extension cords within the meaning of section 10.177(a)(2) of the Customs Regulations. Therefore, the costs of the insulated wire material are includable in the 35-percent value-added requirement for the extension cord sets.

In addition to the costs of the insulated wire materials, the direct costs of processing operations may also be included in order to determine whether the extension cord sets qualify for the GSP under the 35-percent value-added requirement. The costs attributed to the cutting and stripping of cord lengths, assembly of the plug blades and connector contacts, injection molding of the plug and connector housings, and assembly of the safety caps are includable as direct costs of processing operations if such costs are directly incurred in, or can be reasonably allocated to, the manufacture or assembly of the extension cord sets. However, without more explicit information as to what costs are being considered, a more specific determination is not possible.

Holdings.—(1) The vinyl-insulated wire, produced by extrusion of vinyl over wire, is a new and different article of commerce, and, if used in the manufacture of the extension cord sets, is a substantially transformed constituent material for purposes of the GSP. The other materials are not substantially transformed constituent materials

because the processing of such materials does not result in intermediate products that are distinct from the materials as imported and that are subsequently used in the production of the eligible article.

(2) The costs of the operations described in the assembly of the extension cord sets are includable in the 35-percent value-added test for the cords if such costs are directly incurred in, or can be reasonably allocated to, the manufacture or assembly of the cords within the meaning of section 10.178 of the Customs Regulations.

(C.S.D. 80–152)

Export Value: Whether Sales to a Related Selected Purchaser Fairly Reflect Market Value

Date: August 29, 1979
File: R:CV:V JV
061229

This request concerns the proper appraised values for certain bicycle parts from Italy, appraised under export value, section 402(b), Tariff Act of 1930, as amended.

Issue.—Whether the transaction price, i.e., invoiced unit price less 43 percent, between the related parties properly establishes the export value of the merchandise undergoing appraisement?

Facts.—Prior to 1975, sales of similar parts were made to unrelated purchasers in the United States at the Italian price list price prevailing on the date of exportation at discounts ranging from 25 to 35 percent. However, in December 1975, an importing subsidiary was formed for the specific purpose of acting as exclusive U.S. distributor. At that time, approximately 10 percent of the stock ownership in the subsidiary was held by the president and majority shareholder of the exporting company. The balance of shares was held by two investor/associates, each of whom personally committed $100,000 in startup capital. One of the investors became president and chief operating officer. The other held no position with, nor did he participate in anyway respecting the operation of the company. The minority shareholder's contribution of 10 percent represented financing in excess of the $200,000 pledged by the two associates. For the most part, he too had no voice in the day-to-day operations of the subsidiary. The relationship of the parties is governed by a distributorship agreement, executed on December 17, 1975 (exhibit A).

The record reflects that because of his substantial pecuniary interest in the newly formed corporation, the importer originally sought to negotiate the lowest possible price, i.e., 50 percent off the manufac-

turer's price list. However, through negotiations, the parties agreed to a discount of 43 percent for the ensuing year (1976), which was made part of the agreement. The second round of price negotiations occurred during October 1976 at the semiannual shareholder's meeting (minutes attached as exhibit E), at which time the importer again attempted to negotiate a more favorable price. However, for the reasons indicated in the minutes, it was agreed to maintain the price list price less 43 percent for all shipments during 1977, as well as all purchase orders placed during that year. This price agreement was effective through March 1978. On March 17, 1978 (exhibit H), the parties agreed to increases with respect to shipments in April, May, July, and September 1978. Further increases were scheduled to take effect in January 1979.

On or about March 20, 1977, the exporter acquired all of the outstanding stock in the subsidiary. However, pursuant to the terms of the distributorship agreement, the importer remained in the position of president and chief operating officer until early 1979.

Law and analysis.—Before we can adopt the transaction price as establishing the export value of the merchandise, it must represent the price, at the time of exportation to the United States of the merchandise undergoing appraisement, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation. The controlling language of this excerpt of section 402(b) is the term "freely sold", which is defined in section 402(f)(1)(B) of the Tariff Act of 1930, as amended, as "sold or offered for sale in the ordinary course of trade to one or more selected purchasers at a price which fairly reflects the market value of the merchandise."

T.D. 76–118, to the extent modified by T.D. 78–344, constitutes the present position of the Customs Service regarding the criteria which may be used in determining whether the price in sales to a selected purchaser fairly reflects the market value where, as in the instant case, there are sales only to a related selected purchaser. The foregoing decisions are a response to recent decisions of the Court of Customs and Patent Appeals on the matter. What is required is that evidence be furnished showing that the transactions were at arm's length, and that the relationship of the parties does not preclude a finding that the price fairly reflects market value. Evidence to prove an arm's length transaction and a fair reflection of market value, includes, but is not limited to, the circumstances of sales, e.g., the manner in which the prices were determined, the relative markups of the importer and exporter, quantities and levels of trade, and the presence or absence of assists, as well as other dutiable elements of value required to be considered in appraising the merchandise undergoing appraisement.

We will proceed to examine the instant transactions in light of the above decisions. The available evidence demonstrates that from the inception of their relationship, the subsidiary functioned as an independent, self-sufficient entity, responsible for its own profits and losses. For example, it determined its own marketing and purchasing policies, selected its own customers and negotiated its own prices, and could do so without first obtaining approval from its parent. It maintained its own offices in the United States and performed all of its own ministerial functions independently of the parent. In addition, it was solely responsible for the payment of all charges, duties, and taxes incidental to the exportation of the merchandise, and bore the risk of loss.

You point out that certain provisions of the distributorship agreement (to wit: pars. 11 and 15) are inconsistent with the degree of independence that must exist in an arm's length relationship. Paragraph 11 provides, in pertinent part, that the distributor furnish the manufacturer with quarterly reports concerning market conditions in the United States, including marketing strategy and achievements; that the manufacturer provide the distributor free of charge, all information necessary for it to prepare price lists and catalogs in English; that it agree to provide training at its foreign facility in matters relating to the distributor's performance under the agreement; and that the manufacturer will share a portion of the distributor's advertising budget, not to exceed the sum of $50,000 for the first contract year.

Paragraph 15 requires that the U.S. distributor not sell, promote, market, or redistribute any products which, in the opinion of the seller, is competitive with its products.

We cannot agree with your contention that the foregoing provisions, ipso facto, preclude an arm's length relationship between the parties. On the contrary, contractual requirements of this type represent standard commercial practice frequently found in distributorship arrangements.

The inquirer has provided information enabling a comparison of the relative markups of the parties for the first quarter of 1978, the final period in which the transaction price was in effect. The parts chosen for comparison are high—volume dollar items, and comprise approximately 50 percent of the parts shipped. Several conclusions can be drawn from these comparisons. First, each company in comparison to the other, appears to have made a reasonable profit on sales. Second, no inferences can be drawn to logically support the conclusion that an attempt was made to transfer profits or other costs from parent to subsidiary so as to raise the spector of a rigged or special intracompany price or, third, that the element of profit to

be considered in appraising the merchandise undergoing appraisement is deficient so as to preclude the finding of a freely offered price under section 402(b).

In our opinion, the facts strongly support the conclusion that the transaction price was the result of arm's length negotiations, as tested by the legally accepted criteria, and fairly reflects the market value of the merchandise. The mere fact that the exporter acquired all of the outstanding stock in the subsidiary in March 1977 and thereafter exercised a modicum of control over its activities would not, in our view, alter this result, inasmuch as the price became effective in December 1975, and continued through March 1978.

Holding.—The transaction price establishes the export value of the merchandise.

(C.S.D. 80–153)

Classification: Pleated Polyester Fabric, Aluminum Coated and Hole Punched, as an Article

Date: October 22, 1979
File: CIA–2:R:CV:MC
061517 PR

This ruling is in response to Internal Advice Request No. 116/79, concerning the tariff classification of a pleated polyester fabric used in making window shades.

Issue.—The issue presented is whether the subject merchandise, as imported, is so far dedicated for use as an article of commerce that it has ceased to be classifiable under the provisions for fabrics in the piece, and, if so, whether the merchandise is classifiable under the specific provisions for furnishings or under the provisions for articles not specially provided for.

Facts.—The subject merchandise consists of a woven polyester fabric which has been covered on one side by vacuum-deposited aluminum. The aluminum is visible only by reason of a change in color and does not constitute a coating or filling for tariff purposes. We assume that the imported merchandise is not in chief value of the aluminum. After the aluminum is applied, the material is permanently pleated by a heat-setting method. According to information submitted by the importer, this fabric is produced in 150-centimeter widths and in lengths of 100 meters. It is imported with holes punched in both ends of the material completely through all the pleats. Prior to importation, the material is cut into widths according to the orders placed by the American distributors. In practice, the distributor does not

order sizes for customers' specific needs, but will usually purchase the merchandise in widths of from 35 to 65 centimeters and will combine two or more widths to obtain the size blind required. This is done by overlapping the materials to line up the holes on two adjacent panels and running a cord through the overlapping holes.

Law and analyis.—The three tariff provisions which must be considered in determining the proper classification of this merchandise are (1) other woven fabrics of manmade fibers, in item 338.30, Tariff Schedules of the United States (TSUS); (2) other furnishings, not ornamented, of manmade fibers, not knit and not of pile or tufted construction, in item 367.60, TSUS; and (3) other articles not specially provided for, not ornamented, of manmade fibers, not knit and not of pile construction, in item 389.62, TSUS.

In order to determine which one of the three tariff provisions most specifically describes the subject merchandise, it must be ascertained whether the merchandise, as imported, has been so far manufactured that it constitutes something other than fabric in the piece, (i.e. window blinds or shades). General headnote 10(h), TSUS, provides that unless the context requires otherwise, a tariff description for an article covers such article whether finished or not finished.

The tariff schedules do not define the term "fabric" for tariff purposes other than to require that in order to be classifiable in parts 3 and 4, schedule 3, TSUS, fabrics must be "in the piece." See headnote 1, part 3, and headnote 1, subpart A, part 4. In the commerce and industry of this country, the term "in the piece" usually refers to goods sold by the length which are intended to be cut into smaller articles, the identity of which is normally not ascertainable.

What follows is a review of some of the judicial decisions concerning the classification of merchandise as material or as unfinished articiles and the distinctions involved.

Generally, the courts have held that to be classified as an unfinished article, merchandise must not only be dedicated to use as the completed article, but also be identifiable as a specific article. Dedication by itself is not sufficient. In *The Harding Co.* v. *United States*, 23 CCPA 250, T.D. 48109 (1936), brake lining materials in rolls of 100 feet, which had to be cut to fit the individual brake shoes, were held not to be classifiable as parts of automobiles because the identity of the individual article was not fixed with certainty. In *American Import Co.* v. *United States*, 26 CCPA 72, T.D. 49612 (1938), the court held that artificial gut, of silk, imported in 60-foot lengths, even though dedicated for use as fishing leaders, was not classifiable under a provision for unfinished leaders. There the court stated:

> The mere fact that a thing has but one use does not require that it be considered as an article unfinished. If the material has been so far processed from the "material" to a partly completed article, then it loses its character as material and takes on the characteristics of the article for which the material was intended. (At pp. 75 and 76.)

Likewise, in *Bendix Mouldings, Inc.* v. *United States*, 73 Cust. Ct. 204, C.D. 4576 (1974), lengths of moldings dedicated to use in picture or mirror frames, but which had to be cut to desired sizes, were held not to be classifiable as picture frames.

> The extent and completeness of their dedication to use as frames is to no avail since in their imported condition they are not dedicated to the making of any particular frame. (At p. 207.)

Fabrics may be considered to be dedicated as specific articles of commerce in their condition as they leave the loom if they contain clearly defined cutting lines, *Oppenheimer* v. *United States*, 66 Fed. 52 (1895) and *United States* v. *Buss & Co.*, 5 Ct. Cust. Appls. 110, T.D. Appls. 110, T.D. 34138 (1914), or if they have patterns which dictate both where that fabric has to be cut and what it can be used for, *United States* v. *M. H. Rogers, Inc.*, 18 CCPA 271, T.D. 44448 (1930).

Merchandise will not be considered dedicated to a specific use by the courts if there is some, although limited other commercial use of that merchandise. See *Snow's U.S. Sample Express Co.* v. *United States*, 8 Ct. Cust. Appls. 17, T.D. 37161 (1917), where cotton fabric printed with the designs of tablecloths (or bedspreads), but which was sometimes used for curtains, was held not classifiable as unfinished tablecloths or bedspreads; and *United States* v. *Tilton Textile Inc.*, 65 CCPA 18, C.A.D. 1199 (1977), where it was held that a fabric which could be made into a pile fabric by cutting the float yarns on the surface of the fabric was not classifiable as an unfinished pile fabric because there was testimony that the fabric had some, although limited commercial value in its condition as imported.

This is not to say that merchandise containing clear lines for cutting or actually having been cut, will automatically be considered an unfinished article within the meaning of General Headnote 10(h). In *Avins Industrial Products Co.*, v. *United States*, 72 Cust. Ct. 43, C.D. 4503 (1974), steel wire which was cut to specific sizes for use as antennas, but which was capable of other uses, was classified as wire and not under the provision for parts of antennas.

Running through the above cited cases is the concept that in order to be considered an unfinished article, the identity of the unfinished article must be fixed with certainty and it must have no other real commercial value. It must also no longer be mere material, for the making of other articles. In *Paramount Import Co., Inc.* v. *United*

States, 45 CCPA 82, C.A.D. 677 (1958), the court stated in ruling on whether certain discs were classifiable as unfinished buttons:

> An article commercially suitable and commercially used for the making of different things is a material which is just as much adapted to the production of all of them as it is to the production of anyone of them. (At p. 85.)

In certain circumstances, merchandise may be processed beyond the material stage and be classifiable as an article even though its individual identity is not "fixed with certainty." In *Boyle Needle Co.* v. *United States*, 5 Ct. Cust. Appls. 43, T.D. 34009 (1913), the court upheld the classification of coiled steel wire under a provision for articles manufactured of wire, even though the wire was imported in lengths of 50 to 150 feet and would, after importation, be cut into lengths of 28 to 52 inches for use, after further processing, as sash curtain rods.

> The coiling process gives the wire a new and peculiar character, name, and use. The new article is not a "slender rod, strand, or thread of ductile metal," which is the accepted definition of the word "wire" but is an article permanently and essentially differing therefrom in form * * *. The new article has a use as a spring which differs from that of simple wire, and results from the changed form into which the original wire has been permanently converted. (At p. 44.)

Following *Boyle Needle*, the Customs Service believes that the instant merchandise has been manufactured beyond the fabric stage. It is dedicated to use as window blinds or shades and has lost its character as material. Although no evidence has been presented one way or the other, it does not appear that the subject merchandise would have any other commercial value. However, because the instant merchandise is imported in 100-meter lengths, while it may be dedicated to the making of window blinds in general, it is not dedicated to making a particular blind. Therefore, following *Harding* and *Bendix*, *supra*, the merchandise cannot be classified in item 367.60 as an unfinished furnishing.

Thus, the next step to be resolved is whether merchandise which has, in fact, been processed beyond the fabric stage so that it can no longer be classified as fabric, but which has not been processed to the extent that it constitutes an unfinished furnishing may be classified under a provision for articles not specially provided for. Such a result has judicial precedent other than the *Boyle Needle* case.

In re Mills, 56 Fed. 820 (1893), involved cotton fabric that was imported in long lengths with stitched hems. The fabric was used mostly for wearing apparel and had some use as curtains. It was classified by Customs as partly finished wearing apparel. The importer

claimed that the merchandise should have been classified under the provisions for manufactures of cotton.

The Board of General Appraisers classified the merchandise under the provision for cotton cloth. In upholding the claim of the importer that the merchandise should have been classified as manufactures of cotton, the court stated that in order to be classified as unfinished wearing apparel, the merchandise:

> must at least be made up sufficiently far to enable us to identify the particular article of wearing apparel that is going to be made out of it. (At p. 821.)

At this point, an observation concerning the intended broad coverage of schedule 3 is appropriate. The term "textile materials" is defined in headnote 2(a), schedule 3, as including (1) the fibers provided for in part 1 of schedule 3; (2) yarn intermediates and yarns provided for in parts 1 and 4, schedule 3; (3) cordage provided for in parts 2 and 4, schedule 3; (4) fabric provided for in parts 3 and 4, schedule 3; (5) braids; and (6) with one narrow exception, articles produced from any of the foregoing. Parts 1 through 4, schedule 3, include provisions for fibers, yarn intermediates, yarns, cordage, and fabrics of vegetable fibers, wool, silk, and manmade fibers. Thus, all articles except those specifically listed in headnote 1, schedule 3, which are wholly or almost wholly of, or in chief value of (depending on the wording of the concerned provision) vegetable fibers, wool, silk, or manmade fibers were intended to be classifiable in schedule 3.

Further evidence of the broad scope of schedule 3 is found in the Tariff Classification Study, C.I.E. 1/64, volume 1, page 226, which states:

> In order to assure the complete assimulation of *all textile articles* within the textile provisions of the proposed revised tariff schedules, provision has uniformly been made throughout such revised schedules for articles of textile materials other than vegetable fibers, wool, silk, and manmade fibers [Italic added].

Headnote 1, schedule 3, provides additional impetus to the theory that virtually all textile products were intended to be classified under the provisions contained in schedule 3. That headnote lists specified classes of merchandise that are not classifiable in schedule 3, leaving the strong implication that all other textile products were intended to be classified in schedule 3. To accomplish this, a broad interpretation of the word "articles" in subpart 7B, schedule 3, which contains the provisions covering articles of textile materials not specially provided for, would be required. The fact that the word "articles" may have different meanings in different places in the tariff schedules, depending on the context used, is a judicially accepted concept. See *United States* v. *A. Johnson & Co. Inc.*, —— CCPA, ——, C.A.D. 1218 (1978).

If the intention of the drafters of the tariff schedules is not carried out by giving a comprehensive interpretation to the word "articles" in subpart 7B, fabrics that have been cut to specific sizes for specific purposes, but which have not been so far processed that their identity has changed (such as unhemmed squares of cloth used to ball the roots of trees and shrubs) would be precluded from being classified in schedule 3 since such fabrics are not (1) "in the piece" (as required by headnote 1, part 3, and headnote 1, subpart A, part 4;) (2) identifiable as specific articles of commerce (as required by *Harding* and other cases cited above); or (3) commercially dedicated to a single use (as required by *Snow's U.S. Sample Express and Avins Industrial Products, supra*).

Holding.—Following the judicial precedents and the language of the tariff schedules, the subject merchandise is classifiable under the provision for other articles, not specially provided for, not ornamented of manmade fibers, in item 389.62, TSUS.

Effect on prior rulings.—(1) In headquarters ruling letter 060295, dated June 8, 1979, the Customs Service ruled that the "male" half of a fabric closure having mushroom-shaped projections on one surface, was classifiable under the provision for narrow fabrics, of manmade fibers, in item 347.70, TSUS. The holding in that ruling is correct and is not in conflict with the principles expressed above.

There, the fabric had not been processed to a point where its character and identity has been changed from that of a narrow fabric. Further, it did not fall within the holdings of the *Buss* and *Oppenheimer* cases, *supra*, since the closure fabric had no lines of demarcation or cutting lines to keep it from being fabric in the piece. However, to avoid any possible appearance of a conflict in the wording of that ruling with the instant ruling, pursuant to section 177.9(d), Customs Regulations, ruling letter 060295 is hereby modified as follows:

(1) Paragraph 5 of the law and analysis portion of the ruling is changed to read as follows:

> In the instant case, the identity of the final article into which the merchandise will be made has not been fixed with certainty and the merchandise has not been processed to the stage where it has ceased to have the name or character of a "narrow fabric."

(2) Paragraph 6 of the law and analysis portion of the ruling is deleted.

(2) T.D. 75–90 limited the application of *Keystone Casing Supply, Inc.* v. *United States*, 72 Cust. Ct. 241, C.D. 4545 (1974). In that case, one kind of merchandise that was before the court consisted of a net fabric made on a single bar knitting machine. After knitting, the fabric was folded and seamed on a second machine to form a tubular

netting. The court held that such merchandise was classifiable under the provision for netting in the piece, in item 352.80, TSUS, and not classifiable as an article of netting, not specially provided for, in item 386.05, TSUS.

In T.D. 75–90 it was stated that Customs considered the netting to have been manufactured beyond the first operation, and, therefore, to be classifiable as an article of netting rather than as fabric in the piece. On reconsideration of the matter, and applying the principles set out above, the Customs Service concurs with the holding of the court with respect to the merchandise that was the subject of T.D. 75–90. It does not appear that the seamed tubing lost its character and identity as fabric in the piece by reason of the seaming operation. Therefore, we concur with the full holding of the court in the *Keystone* case and, pursuant to section 177.9(d), Customs Regulations, T.D. 75–90 is hereby revoked.

(C.S.D. 80–154)

Prohibited and Restricted Importations: Solid Molded Golf Balls; Patent Infringement

Date: November 2, 1979
File: PAT–3–R:E:E
710641 MC
711461 MC

This ruling concerns the exclusion order issued pursuant to the findings of an International Trade Commission investigation, "In the Matter of Certain Molded Golf Balls," Investigation No. 337–TA–35, prohibiting the importation of certain molded golf balls as infringing a U.S. patent.

Issue.—Whether certain covered golf balls are within the scope of the ITC exclusion order such that their importation should be prohibited.

Facts.—The golf balls in question have a polymeric solid center to which a separate and distinct "surlyn" cover is molded. After the separate operations of forming the center and applying the cover, the balls are then painted. Golf balls of this nature have been domestically mass produced and sold in the United States since 1969 without any question being raised as to patent infringement.

On March 22, 1979, a shipment of these golf balls was entered at a U.S. port. Pursuant to message 6283 (RES–1–O:D:C SJH) of July 7, 1978, the balls were analyzed for possible infringement of U.S. Patent No. 3,313,545. Based upon exhibit T attached to the

ITC exclusion order of investigation No. 337–TA–35, entitled "In the Matter of Certain Molded Golf Balls," a laboratory analysis was conducted which concluded that the golf balls in question here should be excluded as infringing Patent No. 3,313,545. This determination of April 17, 1979, was appealed to headquarters.

Law and analysis.—Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), authorizes the International Trade Commission in certain circumstances involving unfair competition to issue exclusion orders prohibiting the importation of certain goods into the United States. Once such a determination has been made, the Customs Service enforces the prohibition pursuant to section 12.39 of the Customs Regulations (19 CFR 12.39).

ITC Determination and Exclusion Order No. 337–TA–35, concerning certain molded golf balls covered by U.S. Patent No. 3,313,545, directed that infringing balls be denied entry into the United States. Attached to the Commission determination and action was an "Infringement Test Procedure" apparently intended to be used in determining whether or not an imported golf ball infringed upon the patent. This procedure apparently originated as exhibit T of an amended complaint during the ITC investigation. Exhibit T states that the "analysis consists of cutting the golf ball in half to ascertain that the golf ball is a solid molded golf ball or a ball the majority of which is comprised of a solid molded center." Such a procedure was employed by Customs laboratories and was the basis for the exclusion determination.

ITC Exclusion Order No. 337–TA–35 was based upon claim 1 of U.S. Patent No. 3,313,545, described by the ITC as the broadest claim. Claim 1 concerns a "homogeneous molded golf ball * * * predominantly composed of a filled elastomer." In addition, the patent is quite specific in its description of

> the production of the homogeneous molded golf ball in accordance with (this) invention: The molding is effected in mating precision hemisphere molds or dies whose molding surface is covered with multiple regular projections to give the molded ball a conventional dimpled or waffled appearance * * * . The molding is a simple, straightforward operation * * * . After the molding, the ball is removed from the mold and * * * (after being) painted and marked, is then ready for marketing and use.

No mention is made of a separate covering operation because the ball is a solid molded golf ball. We have been informally advised by the ITC that paragraph 14 of the original complaint states that there are two types of golf balls, wound balls and molded balls which are either painted or covered and then painted. However, covered balls are not mentioned in the patent and the entire question of covered balls apparently did not arise during the ITC investigation. Thus, although

the patent owner sought protection against all molded golf balls, non-homogeneous balls cannot be construed to be covered under the patent.

The golf ball in question here is not homogeneous. While the cores of both balls may be somewhat similar, the core in question is much smaller and a separate and distinct cover is applied in a separate operation. Without that cover, the core would not be a satisfactory golf ball. In addition, the distinct cover is comprised of an entirely different, separately patented (U.S. Patent No. 3,819,768) material. Basically, while the patented ball is a one-piece homogeneous ball, the one in question is a two-piece nonhomogeneous golf ball.

As mentioned, claim 1 described a ball "predominantly composed of a filled elastomer." By contrast, the elastomer center of the two-piece ball cannot be construed to predominate. First, the volume of the core is 28.57 ml. Thus the cover is nearly 30 percent of the volume of the entire ball. Second, the cover is about one-tenth of an inch thick while the paint on the patented ball is only two one-thousandth of an inch in thickness. Finally, it is the patented "surlyn" cover which gives the golf ball its distinct characteristics. Being neither homogeneous nor a predominantly filled elastomer, it is our opinion that the covered two-piece golf ball does not infringe Patent No. 3,313,545.

However, based upon a literal reading of exhibit T, it may still appear that the balls are excludable. The issue to be resolved is whether the exhibit or the language of the patent itself should control.

It is our understanding that exhibit T, submitted by the patent owner with his amended complaint, was intended to provide technical procedures and reference data for the analysis of golf balls which may infringe the patent.

Exhibit T was not included in the body of the ITC's determination and was not separately adjudicated. It was simply added to the order in the original form as it appeared in an appendix to an amended complaint. The statement referring to "a ball the majority of which is comprised of a solid molded center" goes beyond the claim of the patent. Accordingly, the exhibit should not be entitled to greater weight than the language of the patent itself.

Holding.—While exhibit T is the correct testing procedure to be employed during an initial determination as to whether a golf ball infringes Patent No. 3,313,545, the actual language of the patent limits the scope of the exclusion order. Separately covered two-piece golf balls of the nature of the herein described variety do not infringe the patent and should not be excluded.

(C.S.D. 80–155)

Conditionally Free Merchandise: Foreign-Made Motion Picture Films Rented to a Foreign Firm and Returned

Date: November 7, 1979
File: BAG–5–08 R:E:E
711263 M

This ruling concerns whether foreign-made motion picture films rented to a foreign firm for its use may be entitled to duty-free entry upon their return under section 10.68, Customs Regulations.

Issue.—Is a U.S. firm in the business of renting films to a foreign firm for the latter's use abroad entitled to duty-free entry under section 10.68, Customs Regulations, when the foreign-made films are returned to it?

Facts.—A U.S. firm is involved in the business of renting motion picture films to theaters and other organizations in the United States and abroad. Some of the films are foreign-made films on which duty was paid on their initial importation into the United States. Before sending the films abroad, the firm registers them on Customs form 4455. When the films are returned to the United States, the U.S. firm attempts to clear the films under the duty-free provision of section 10.68 of the Customs Regulations.

The District Director contends that the duty-free provision of section 10.68, Customs Regulations, is not available in this instance because:

(1) ORR Ruling 75–0134, in interpreting section 10.68, states that "* * * the tools of trade provision contemplates action by or for the account of an individual, rather than a business activity," and

(2) Section 10.68 refers to articles "taken abroad" and the District Director believes that this provision would apply to items, accompanied or unaccompanied, but which would be used abroad by the U.S. individual abroad, and would therefore not apply to the case of films being rented or loaned from one business activity to another.

Law and analysis.—Section 10.68 of the Customs Regulations provides in pertinent part, that motion picture films taken abroad may be returned without the payment of duty provided that prior to exportation the articles are registered on Customs form 4455 which is filed with Customs. When the merchandise is returned the presentation of the duplicate copy of Customs form 4455 and the declaration on Customs form 3299, in lieu of an entry, would be sufficient documentation to clear the articles.

Item 810.20, Tariff Schedules of the United States (TSUS), provides that professional books, implements, instruments, and tools

of trade, occupation, or employment, imported by or for the account of any person arriving in the United States from a foreign country may be entered free of duty, provided such articles were taken abroad by him or for his account. This provision would be considered broad enough to cover motion picture films.

Item 810.20, TSUS, is categorized by the tariff schedules as a personal exemption and, therefore, requires that the action be done by or for the account of an individual, rather than a business activity. ORR Ruling 75–0134 states that: "Therefore, the tools of trade must be taken out and returned either by the employee or for his account, and not in the name of the company." We have ruled that item 810.20, TSUS, is not concerned with the ownership of such articles but is concerned with whether such articles are taken out and returned by or for the account of an individual. Therefore, such articles mentioned in section 10.68, Customs Regulations, owned by a corporation, could be entitled to duty-free treatment under item 810.20, TSUS, if they were taken out and returned by or for the account of an employee of the corporation.

We do not believe that the term "taken abroad" mentioned in item 810.20, TSUS and section 10.68, Customs Regulations, precludes a rental or loan situation. If it were the intention of Congress to limit this provision to articles actually used by the individual by or for whose account the articles were taken out, we believe that there would have been a limiting provision, similar to the one in item 810.10, TSUS, to the effect that the articles must have been "actually used abroad by him * * *, and not intended for any other person, or for sale." Since item 810.20, TSUS, and section 10.68, Customs Regulations, do not contain the above limiting provision, we believe that section 10.68 would apply to the case of films being rented or loaned to a foreign business activity. However, although the individual by whom or for whom the article was taken abroad need not physically use the article himself, he must be absent from the United States at least during some portion of the time when the articles were outside of the United States.

In lieu of the declaration on Customs form 3299, the importer may file an informal entry on Customs form 5119–A (see sec. 143.23, Customs Regulations).

Holding.—If the films are taken out by or for the account of an employee of the corporation and the employee is absent from the United States during some portion of the time when the films were outside of this country, the films may be brought back and entered under the duty-free provision of item 810.20, TSUS, as implemented by section 10.68 of the Customs Regulations, even though the films are rented to another business entity for its use in the foreign country.

If the films are merely sent abroad and returned, however, they are subject to duty upon their reimportation.

(C.S.D. 80–156)

Drawback: Schedules (Formulas); Stock-in-Process; Nonspecification Merchandise

Date: November 7, 1979
File: DRA–1–09–R:CD:D B 210851

Issues.—(1) May formulas which account for irrecoverable waste and overweight percentages be used to determine the amount of a designated product used in the production of exported articles?

(2) May small percentages of a final product which are broken, too large, or too small, and therefore cannot be wrapped and exported, be reintroduced into production as a stock-in-process?

(3) May drawback be claimed on a portion of the foregoing product set out in (2), which cannot be reintroduced, and must be exported unwrapped?

(4) Is taste a criterion for determining same kind and quality for cocoa butter obtained from cocoa beans by the expeller method and cocoa butter obtained from cocoa beans by the press method, when both butters meet FDA and industry standards for use in production?

Facts.—Prior to submitting a drawback proposal, a large manufacturer of candy bars has raised the above issues based on the following:

The manufacturer imports chocolate crumb (a mixture of cocoa, sugar, and milk) as well as cocoa butter which is produced from African cocoa beans by means of the centrifugal or expeller method. These materials are used along with domestic chocolate crumb and cocoa butter in the production of candy bars.

During production, an average of 1 percent by weight of those ingredients is contaminated and lost as an irrecoverable waste. Additionally, the finished candy bars may be over or under the target weight for each chocolate bar. So an average weight discrepancy is factored into production formulas as is the average waste figure. The manufacturer wishes to use these formulas as bases for determining the amounts of designated (imported) and domestic merchandise used in the exported product for computing the drawback due.

The processing also results in a small percentage of bars which are too large or small or broken and cannot be wrapped. This merchandise is known as "rework" and, with one exception, is introduced into

the manufacturing process. No drawback will be claimed on this rework until it is reprocessed into finished products and is exported. The manufacturer asks if this treatment is acceptable to Customs.

The exception to the rework procedure is one particular bar which cannot be placed back into the process and is exported unwrapped. These unwrapped bars have a drawback value, equal by weight, to the packaged products and the manufacturer wishes to claim drawback on them.

Finally, the manufacturer has submitted specifications for the expeller and press cocoa butters, stating that they are totally interchangeable. The manufacturer states that the same quality bar results using either butter and the purchaser of the bar could not tell the difference in taste.

LAW AND ANALYSIS.—(1) Section 22.5, Customs Regulations, provides in pertinent parts of relative subsections:

> (a) * * * (T)he records of the manufacturer or producer shall show (1) The quantity, identity, kind, and quality of the duty-paid merchandise or of other articles manufactured or produced under drawback regulations * * * designated as the basis for the allowance of drawback on the exported articles; * * * (6) The quantity of merchandise of the same kind and quality as designated merchandise, used in the manufacture or production of the exported articles.

Schedules (formulas) may be used to determine the amount of merchandise of the same kind and quality used to produce the exported articles. However, the schedule may not give an average amount but must give the minimum amount of the same kind and quality merchandise used to produce, or appearing in, a unit of the product. For example, if two units were exported and 100 pounds of cocoa was used to produce one unit and 102 pounds to produce another unit, the schedule must state that 100 pounds of cocoa butter was used to produce each unit. An average of 101 pounds would not be acceptable.

Those nonspecification bars which are reintroduced into production constitute a stock-in-process. This reintroduction may be done, but it may require a modification of the formulas.

Also, drawback would be allowable on the overweight and/or broken bars which are exported unwrapped, but the applicant must prove the amount of designated butter in the exported product, or be limited to the lowest possible amount of butter.

(2) A drawback statement (proposal) may be approved under 19 U.S.C. 1313(b) only if the designated (imported) and domestic materials are of the same kind and quality. "Same kind and quality" does not require that two substances be identical. What is required is that the two substances may be used interchangeably to manufacture or

produce the same type and quality of exported articles without significant change in the manufacturing process.

In this case, we are dealing with cocoa butters, one imported, the other domestic, which are chemically the same except for two minor variances—microbiological plate count and amount of shell and/or germ fat. According to a representative of the Food and Drug Administration, which incidentally has set no standards for cocoa butter, these variances are insignificant. Government (FDA) and industry standards relate only to amounts of cocoa fat (butter) which must appear in different types of chocolate, chocolate liqueur, cocoa, etc.

Thus, the applicant in the instant case may use either cocoa butter without regard to its origin and still meet Government and industry standards for its products. Use of one cocoa butter or the other, or a combination of the two, does not require any changes in the manufacturing process.

Holdings.—(1) Formulas based on total weight of product produced and which contain waste and off-weight factors may be used to determine the amount of designated or domestic material used in production. The formulas must show the minimum amount of same kind and quality merchandise used to produce, or appearing in, a unit of exported product.

(2) Small percentages of a final product which do not meet specifications are considered stock-in-process and may be reintroduced as such into the manufacturing process. Accurate records of stock-in-process must be kept, if drawback is based on a "used in, less valuable waste," or a "used in" basis, and if necessary, the formulas must be modified.

(3) Drawback may be claimed on exported nonspecification merchandise, if such merchandise is listed in the drawback proposal's "Exported Articles on Which Drawback Will Be Claimed" section.

(4) In this case it is not necessary to use taste as a criterion to determine same kind and quality between cocoa butter obtained by the expeller method and cocoa butter obtained by the press method since the specifications for the two butters are sufficient to determine same kind and quality.

(C.S.D. 80–157)

Value: Assists; Dutiability of Design Information in the Public Domain

Date: November 13, 1979
File: R:CV:V JV
061468

This is in response to a request for internal advice concerning the dutiability of clothing design assists furnished to more than one overseas manufacturer.

Issue.—Whether it is proper to assess duty on the full value of a design assist where the style for such design has been previously marketed and is therefore available in the public domain for copying?

Facts.—The involved importers are divisions of a large multinational corporation headquartered in the United States. They are engaged in the importation and wholesale distribution in the United States of men's and women's sportswear. Prior to December 1976, importations were almost exclusively limited to sportswear produced by several unrelated Hong Kong manufacturers. The design information provided them by the importers was derived primarily from samples of similar type garments contemporaneously selling in other foreign markets. More recently, however, such information has been developed using the importers' multiple resources, including the services of their newly established design department. Although such design information is still derived primarily from samples coupled with observations of styling concepts and trends, the information gleaned therefrom is generally turned over to their design department for analysis, interpretation, and the embodiment of new designs. Today, they import sportswear from Singapore, Taiwan, Korea, the Philippines, and other Pacific rim countries. Just as before, designs for any given style are furnished to more than one foreign manufacturer, except that now, the different manufacturers are situated in different countries. Neither the designs nor the styles produced and marketed therefrom are protected by patent or copyright.

Law and analysis.—It has long been the policy of Customs, subject to certain limitations, that a design assist used in the production of imported merchandise will be dutiable in full each and every time it is furnished to a different overseas manufacturer in the same or different country (I.A. 341/75). Counsel for the importers takes exception with this policy, arguing that it is proper to assess duty on the full cost of developing a design for a given style only upon the initial fabrication or shipment of that style, not each time that style is fabricated by

different producers in the same or different countries. It postulates once a particular style reaches the marketplace the style information embodied in the design becomes part of the public domain and, as a consequence, cannot thereafter constitute a dutiable assist. Cited as authority is T.D. 78–337.

T.D. 78–337 involves the dutiability of research and development (R. & D.) which was formulated in 1946 and then, after being used for 28 years in the domestic market, was furnished to an overseas producer of imported merchandise. The R. & D. was covered by both a patent and copyright. The patent expired in 1963 and was not renewed. The copyright, having an effective life of 50 years, remained in force. That portion of the R. & D. not protected by the patent was ruled not to be a dutiable assist on the grounds that it constituted knowledge in the public domain (freely available to any interested person for inspection and copying). On the other hand, that portion of the R. & D. which remained under copyright was held to be dutiable at its full value because it did not constitute information in the public domain.

In Headquarters letter 541405 SPK, dated April 12, 1977, certain highway bridge design plans formulated by the State of California and adopted as standard specifications by the Federal Highway Administration were held to be dutiable only at their cost of reproduction. Our determination centered on the fact that, unlike research, development, and design information held in a patented or proprietary capacity, the designs under consideration constituted knowledge in the public domain. The controlling factor was not that the original cost or value of the data had been nullified by the initial production of the imported bridge structures or that the data was no longer essential to their production, but that any interested person, including a foreign manufacturer, could, if he so desired, obtain the information without incurring any cost over and above the administrative cost of reproduction. In effect, once these designs became freely available for inspection and copying, their value for duty purposes upon subsequent use by a different manufacturer became nugatory. By the same token, had the designs not been made freely available, they would have been dutied at their full cost of development.

You indicate that there has been no factual evidence presented to date which would substantiate that either the book of styles and designs (replete with the design information typified by the items portrayed in the book) or individual designs developed for use by the involved importers have been made freely available. This, plus the control exercised over the designs by them precludes, in your opinion, their being part of the public domain.

In the case of wearing apparel unprotected by patent or copyright, it matters not that the design itself is not freely available for inspection or copying. Once a particular style is marketed and can readily be purchased off the rack and copied and reproduced by competitors or other interested persons with no adverse legal consequences, the furnishing of the information embodied in the design to different manufacturers would not, in our view, constitute a dutiable assist. In essence, the marketing of the garment reproduced from the design signifies that the holder of the assist has relinquished control over the information contained therein, which he can no longer sell on the open market. Consequently, such a method of marketing would place the design in the public domain and, as a consequence, render its value nominal for duty purposes.

Based on the foregoing, we conclude that the subject designs, including the styles produced and marketed therefrom, constitute assists in the public domain.

Holding.—It is improper to assess duty on the full value of a clothing design assist unprotected by patent or copyright where the style for such design has been previously marketed and, therefore, is available in the public domain for copying. This is so regardless of whether the design itself becomes freely available.

(C.S.D. 80–158)

Classification: Thermal Underwear Tops; Chief Use, General Headnote 10(e)(i), TSUS

Date: November 18, 1979
File: CLA–2:R:CV:MC
060861 PR

This ruling concerns the tariff classification of thermal underwear.

Issue.—The issue presented is whether thermal underwear tops are classifiable under the provisions for underwear or under the provisions for other wearing apparel. While not directly presented, a related issue is whether thermal underwear tops and bottoms, when imported together, are classifiable as entireties.

Facts.—The submitted sample is a crew-neck long-sleeve pullover. It is packaged in a clear plastic container which contains a picture of a man wearing the packaged shirt with a pair of long underpants. The package is labeled to be "Men's Heavy Weight Thermal Underwear." The labeling also indicates that the garment is 67 percent cotton and 33 percent polyester. The sample is knitted in a ribbed or waffle pattern.

In an effort to determine if an established and uniform practice of classification is applicable to the instant merchandise, this office requested information from 20 district directors and 2 area directors concerning their classification practices with respect to the instant merchandise and similar merchandise.

The reports received clearly showed that no uniform and established practice of classification was applicable to this merchandise. Some district (area) directors reported that they uniformly classified the instant merchandise as underwear while other district (area) directors reported that they uniformly classified the same merchandise under the provisions for other wearing apparel. Likewise, the reports differed markedly on the question of classification of thermal underwear tops and bottoms as entireties—some districts (areas) reporting that when the tops and bottoms were imported together they were classified as entireties (either as underwear or under the provisions for other wearing apparel) while other district (area) directors reported that when they were imported together they were separately classifiable with the tops being classified under the provisions for other wearing apparel while the bottoms were classified as underwear.

Based on the reports, it appears that a substantial amount, if not the majority of the thermal underwear tops and thermal underwear bottoms, are imported separately. From a visit to some of the local stores in the Washington metropolitan area, it appears, at least in this area, that thermal underwear tops and thermal underwear bottoms are more often than not packaged and sold separately.

Law and analyses.—The provisions for textile underwear are found in subpart 6E, schedule 3, Tariff Schedules of the United States (TSUS). Headnote 1 to that subpart states that the subpart covers only underwear not specially provided for, of textile materials.

No definition of the term "underwear" is found any place in the tariff schedules nor have the courts adopted or approved any particular definition of that term. In the case of *Max M. Myres* v. *United States*, 9 Treas. Dec. 298, T.D. 26085 (1905), the Board of General Appraisers held that underwear was wearing apparel which was intended to be worn underneath the clothes, but which was not required to be worn next to the skin. In *Childrens Hose, Inc.* v. *United States*, 55 Cust. Ct. 6, C.D. 2547 (1965), the court ruled that nylon tights or leotards which were designed to be at least partially utilized under an outer garment and partially exposed, were not underwear:

> * * * the court may take judicial notice of the fact that leotards or tights whether worn by children or women are designed to be at least partially utilized under an outergarment and

> partially exposed, depending on the age of the wearer and the purpose for which they are worn.
>
> It would, therefore, seem that if a portion of this imported merchandise is underwear, a portion of it is not underwear. By the same token, while the exposed portion may be outerwear, the portion concealed would not be outerwear. Therefore, the articles at bar are more than underwear and more than outerwear. They are, therefore, in fact neither fish nor fowl. (At pp. 9, 10.)

It is evident, although not expressed, from the decision in *Children's Hose*, that the provisions for underwear are, in fact, use provisions. In *Admiral Craft Equipment Corp.* v. *United States*, —— Cust. Ct. ——, C.D. 4796 (1979), the court specifically stated that a provision for wearing apparel is a classification by use. Underwear is a type of wearing apparel and, following *Children's Hose*, since the classification of garments under the underwear provisions depends on how those garments are used, the provisions for underwear are no less use provisions than are the provisions which specifically provide for "wearing apparel."

In accordance with general headnote 10(e)(i), TSUS, where a tariff classification is controlled by use, other than by actual use, that use will be determined in accordance with the chief use of the class or kind of merchandise to which the imported articles belong at, or immediately prior to, the date of importation. The term "chief use" is stated in that headnote to mean the use which exceeds all other uses combined.

Where the classification of merchandise is dependent on the chief use of that merchandise, there must be proof of such use. *Advance Solvents & Chemical Corp.* v. *United States*, 34 CCPA 148, at 151, C.A.D. 358 (1947).

In determining the chief use of an article, the manner in which that article is merchandised is a consideration. *Russ Berrie & Co.*, v. *United States*, 76 Cust. Ct. 218, C.D. 4659 (1976). Other factors that can be considered are the construction and the nature of the article itself, the contents of any printed matter which is generally distributed with the article, and the type of trade to which the article is sold. *Inter-Maritime Forwarding Co. Inc.* v. *United States*, 59 Cust. Ct. 412, C.D. 3177 (1967). The characteristics of the merchandise itself may be considered, *United States* v. *Colibri Lighters (U.S.A.) Inc.* 47 CCPA 106, C.A.D. 739 (1960), and it has even been held that the presumption of correctness which attaches to Customs classification of merchandise may be overcome by the probative effect of the samples themselves. *United States* v. *Bruce Duncan Co., Inc.* v. *United States*, 50 CCPA 43, C.A.D. 817 (1963); *United States* v. *New York Merchandise Co., Inc.*, 58 CCPA 53, C.A.D. 1004 (1970). Thus, where evidence

as to actual use is limited, the character and design of the sample itself may compel a finding as to the primary use of the merchandise. *Leaf Brands, Inc.* v. *United States*, 70 Cust. Ct. 66, C.D. 4409 (1973); *Oxford International Corp.* v. *United States*, 70 Cust. Ct. 217, C.D. 4433 (1973). Adaptability, adequacy, or susceptibility of use has little, if any, probative value. *Bob Stone Cordage Co.* v. *United States*, 51 CCPA 60, C.A.D. 838 (1964).

Since the subject inquiry was presented by another division in the Customs Service headquarters in order to ascertain the quota status of this merchandise, information that might normally be submitted by an importer to the Customs Service to establish chief use is not available. However, the manner of packaging strongly indicates that the merchandise is intended for sale as underwear. Further, based on the construction and appearance of the sample, it belongs to a class of goods generally known as thermal underwear. It is recognized that the submitted sample is not only capable of being worn without other clothing on top of it but is, on occasion, so worn. When viewing the sample, it is clear that such use is incidental to use of the merchandise as underwear.

Even if the use of the garments as outerwear is more than incidental, it would not effect our determination that the merchandise is classifiable as underwear since there is no evidence of which we are aware that thermal underwear, as a class of merchandise, is not chiefly used as underwear.

Having determined that the instant merchandise constitutes underwear for tariff purposes, the question of whether the submitted sample would be classified as an entirety if imported with a matching bottom may be moot. However, since the question has arisen, we believe that it should be resolved.

Legal determination No. 79–283, issued August 29, 1979, which circulated headquarters ruling letter 059722, dated April 13, 1979, contains the following statement of the views of the Customs Service in regard to the classification of wearing apparel sets as entireties.

> Accordingly, in the absence of an established and uniform practice to the contrary, the Customs Service will usually classify wearing apparel sets as entireties, if (1) the components are coordinated as to color to the extent that it is obvious that those components were designed and intended to be worn together; (2) the components of the set are sold as a unit and not separately; and (3) the components, when joined together, form a new article which processes a character or use different from that of its parts, or one of the components in the set is so predominant that the other components are merely incidental to that predominant component.

Applying that criteria to sets of thermal underwear, it appears that those sets should not be classified as entireties for tariff purposes because a substantial volume of those components are sold as separates.

Holding.—It is the determination of the Customs Service, that garments which are advertised, labeled, and sold as thermal underwear, will, in the absence of evidence to the contrary, be considered to belong to a class of merchandise that is chiefly used as underwear and, therefore, are classifiable as such.

Effect on prior rulings.—Any prior administrative rulings by the Customs Service which are in conflict with the principles and holding of this ruling are hereby revoked if (1) the merchandise involved is not the subject of an established and uniform practice of classification, or (2) the merchandise involved is the subject of an established and uniform practice of classification, but the change in classification that would result from applying the principles and holding of this ruling will not cause the merchandise to be subject to a higher rate of duty than is presently applicable.

(C.S.D. 80–159)

Prohibited and Restricted Importations: Combination Pen and Penholder; Trademark Infringement

Date: November 19, 1979
File: TMK–3–RRUEE
711677 SO

This ruling concerns the applicability of the prohibition set forth in section 526, Tariff Act of 1930, as amended (19 U.S.C. 1526), against the importation into the United States of merchandise of foreign manufacture bearing an American trademark.

Issue.—Would the importation of a combination pen and penholder bearing the description on the package in large yellow letters, "Stretch-Cord Ballpoint Pen," infringe upon the rights of the owner of the registered trademark, "Stretch-a-Pen," for combination pen and penholders.

Facts.—An importation of combination pen and penholders packaged in plastic bubble display cards bearing the description in large yellow letters, "Stretch-Cord Ballpoint Pen," is contemplated. The importer has asked for a ruling on whether the importation of these combination pen and penholders bearing the description referred to above would infringe upon the registered trademark, "Stretch-a-Pen," which has been recorded with Customs for import protection by the trademark owner, Norbert Specialty Corp. (New York corporation).

The importer noted that their item has no brand name, only a description of the article, and expressed the opinion that the description is not sufficiently similar to "Stretch-a-Pen" to be confusing to the consumer. A sample of the imported article was submitted.

Law and Analysis.—Section 526 of the Tariff Act of 1930, as amended (19 U.S.C. 1526), prohibits the importation into the United States of any merchandise of foreign manufacture bearing a trademark owned by a corporation created or organized within the United States, provided a copy of such trademark registration is filed with the Secretary of the Treasury and recorded in the manner provided by regulations (19 CFR 133.1–133.7).

Infringement of federally registered marks is governed by the test of whether defendant's use is likely to cause confusion, or to cause mistake, or to deceive. Descriptive words such as "stretch" have little trademark significance and will not be regarded as the dominant portion of the mark, because such words may be used by everyone. While it is true that marks must be considered in their entireties, it is well settled that no one can appropriate as a trademark a generic name or one descriptive of an article of trade, its qualities, ingredients, or characteristics. It is evident that the suffixes "a-Pen" and "Cord Ballpoint Pen" neither look nor sound alike. We are of the opinion that, under the normal test applicable to unsophisticated buyers of a product at retail, there would be little likelihood of confusion.

Holding.—Entry of the imported article known as "Stretch-Cord Ballpoint Pen" would not be prohibited as infringing on the registered trademark "Stretch-a-Pen."

(C.S.D. 80–160)

Drawback: Certificate of Delivery Requirements; Section 22.15 (a) and (b), Customs Regulations

Date: November 19, 1979
File: DRA-1-09-R:CD:D B 211088

Issue.—Must a buying agent or middleman who does not have actual possession of imported merchandise or receive title thereto file a certificate of delivery for that merchandise as set out in sections 22.15 (a) and (b) of the regulations, if such certification is not necessary to trace continuity of possession from importer to manufacturer?

Facts.—Certain boxcars which have been exported and upon which drawback will be claimed were manufactured by company A. The

steel used was imported by company B which has provided six certificates of delivery (Customs form 7543) attesting to the delivery of the steel to company A. Middleman C, a buyer of steel, located the steel in possession of B, and informed A who purchased the steel through C. That intermediary then took his commission from the sale price and instructed B to deliver the steel to A. C did not take actual possession of or receive title to the steel.

Law and analysis.—The applicable regulations provide:

> *Section 22.15(a).* When the merchandise used in the manufacture of the exported articles was not imported by the manufacturer of the articles, no drawback shall be allowed until there has been filed with the District Director at the port where the drawback entry is filed a certificate of delivery in duplicate on Customs form 7543 or official evidence of the existence of such a certificate filed at another port, fully describing the merchandise delivered and tracing it from the custody of the manufacturer. * * *
>
> *Section 22.15(b).* If the merchandise was not delivered directly from the importer to the manufacturer, each intermediate transfer shall be shown on the certificate of delivery by a certificate of the person through whose possession the merchandise passed.

The reason for these regulations is clear. Customs has to know that the merchandise designated under 1313(b) or actually used to manufacture or produce the exported articles under 1313(a) is in fact the merchandise designated or used. This insures that the same merchandise will not be used as a basis for drawback more than once.

It is clear that a certificate of delivery must be executed by each person (or business entity) in the chain of possession of the merchandise before an exporter may obtain drawback. Any person who executes a certificate of delivery must have personal knowledge of the facts attested, whether the facts are known firsthand or knowledge thereof was obtained by other methods.

The question here is whether intermediary C was a "person through whose possession the merchandise passed."

For purposes of the applicable regulations, "possession" is such control over the merchandise in question that certification of delivery by a particular person (or business entity) is mandatory to trace the continuity from importer to manufacturer.

We have previously closely scrutinized the situations of parties in a drawback transaction to determine whether a bona fide principal/agent relationship existed, or whether the relationship was created by the parties merely to produce a climate for the allowance of drawback. However, it is irrelevant for purposes of this decision whether C is an agent of either A or B. As a matter of fact, it appears that C was and is an individual entrepreneur. The middleman in this instance

can certify nothing more than that he paid B for the steel and instructed that company to forward it to A, the buyer/manufacturer. The only entity which can certify actual delivery of the steel is B, the importer, and B has done so in this instance. By B's firsthand certification, Customs personnel can trace the steel from the importer to the manufacturer, which satisfies the intent of the regulations.

Should C be required to file the certificate, he or she could only inquire of B as to whether the steel had been delivered to A. This step would be superfluous for practical purposes, as well as contrary to the best evidence rule.

Holding.—Certificates of delivery are required only when necessary to trace the continuity of possession of merchandise from importer to manufacturer.

(C.S.D. 80–161)

Temporary Importation Under Bond (TIB) Entry: Whether a TIB Entry May Be Substituted for a Trade Fair Entry

Date: July 16, 1980
File: CON–1–RRUCDB
211775 L

Issue.—May an article entered for a trade fair pursuant to part 147, Customs Regulations (19 CFR 147) subsequently be admitted free of duty under bond?

Facts.

A customhouse broker asks whether a temporary importation under bond (TIB) entry may be made after the close of a trade fair to replace a trade fair entry.

Law and analysis.—Articles admitted temporarily free of duty under bond are provided for in schedule 8, part 5, subpart C, Tariff Schedules of the United States (TSUS). Headnote 1(a) to subpart C provides in part that:

> The articles described in the provisions of this subpart, *where not imported for sale or for sale on approval,* may be admitted into the United States without the payment of duty, under bond for their exportation within 1 year from the date of *importation.* * * * [Italic added.]

Section 147.42(a), Customs Regulations (19 CFR 147.42(a)), provides in part that:

> Any article entered for a fair * * * may be entered for consumption, for warehouse, or under any other provision of the Customs laws, or for another fair, or may be transferred to other

> Customs custody status or to a foreign-trade zone * * * at any time before, or within 3 months after, the closing date of the fair.

Although section 147.42(a), Customs Regulations, provides that an article entered for a fair may be entered "under any other provision of the Customs laws", headnote 1(a) to schedule 8, part 5, subpart C, TSUS, a statutory provision, requires that articles entered under TIB not be imported for sale or for sale on approval. In addition, there must be the intent, at time of importation, that they be exported or destroyed under Customs supervision within the statutory time period.

Since the statutory time period for articles entered under the TIB provision begins to run at time of importation and not at the time the TIB entry is accepted, and since articles entered under a trade fair entry may be sold and entered into the commerce of the United States, it would not be possible to establish the requisite intent to export or destroy the articles under Customs supervision which is a requirement at the time of importation to qualify for a TIB entry.

Accordingly, a TIB entry may not be substituted for a trade fair entry.

We note further that section 147.2(b), Customs Regulations (19 CFR 147.2(b)) prohibits entry under the trade fair regulations of articles previously imported under TIB. We interpret this provision to relate to the requirement that articles entered under TIB must be exported or destroyed within the statutory period and may not be sold or sold on approval.

Holding.—A TIB entry may not be substituted for a trade fair entry.

(C.S.D. 80–162)

Drawback: Whether Reducing the Degree Brix of Orange Juice Concentrate Is an Approved Manufacturing Process

Date: November 27, 1979
File: DRA–1–RRUCDB NK 211084

Issues.—(1) Whether the blending of water with concentrated orange juice to merely reduce the degree brix of the concentrate is a manufacturing process for drawback purposes and, if so, (2) whether any recourse can be taken on liquidated drawback entries covering such exported merchandise.

Facts.—In a memorandum, the Regional Commissioner of Customs, Miami, referred to two drawback contracts covering the manufacture

of orange juice concentrates with the use of orange juice concentrates and sets forth the following facts:

1. The domestic substituted and imported designated orange concentrates covered by the contracts meet the standard of identity of the Food and Drug Administration and the grade A standard of quality of the U.S. Department of Agriculture for concentrated orange juice for manufacturing (21 CFR 146.153 and 7 CFR 2852.2222);

2. The contracts contain paragraphs that describe many optional manufacturing processes with the use of the conjunctions or and either and those paragraphs may be interpreted as meaning that the blending of water with a concentrate to merely reduce the degree brix of the concentrate is an approved manufacturing process for drawback; and,

3. Drawback entries were liquidated in 1978, covering exported concentrates that were merely reduced in degree brix by the addition of water.

The Regional Commissioner requested advice as to whether drawback is allowable based on the facts submitted and, if not, what recourse can be taken on drawback entries liquidated in 1978.

Law and analysis.—The degree brix of concentrated orange juice for manufacturing as defined in 21 CFR 146.153 may range from 20° to 100°. As a practical matter, imported concentrated orange juice generally ranges in the area of 65° brix. Degree brix is a measurement of the quantity of the soluble solids (sugar) in a concentrate. It is not a measurement of its quality. The grade A quality standard of the U.S. Department of Agriculture for this product (7 CFR 2852.2222) is based on a scoring system for color, defects, and flavor.

An essential requirement of the substituted drawback law (19 U.S.C. 1313(b)), is that the substituted domestic merchandise must be of the "same kind and quality" as the designated imported merchandise. Imported 65° brix concentrate of grade A quality and domestic 50° brix concentrated orange juice of grade A quality would be considered as of the "same kind and quality" for drawback purposes. Although the two concentrates differ in degree brix, they are used interchangeably by the citrus industry in the manufacture of other orange juice products and meet the "same kind and quality" requirement of the drawback law.

Another essential requirement of the substituted drawback law is that the imported and the substituted domestic merhandise must be "used in the manufacture or production" of new articles. To hold that merely reducing the degree brix of a concentrate from 65° to 50° by the addition of water to the concentrate is a manufacturing process for drawback would jeopardize the holding that a concentrate of 65° brix and a concentrate of 50° brix of grade A qualities, are interchangeable and meet the "same kind and quality" requirement of law.

The blending of imported grade A orange juice concentrate of 65° brix with water to reduce the degree brix of the concentrate to 50° does not result in a change in the quality or character of the imported concentrate. The quality score for color, defects, and flavor of the imported 65° brix concentrate is not changed by the addition of water. Nor for that matter, a 50° brix concentrate is no more edible than a 65° brix concentrate. The reduced concentrate of 50° brix would be considered as the "same kind and quality" as another batch of grade A concentrate of 65° brix.

Under section 1514, title 19, United States Code, the liquidation of drawback entries allowing drawback, with certain exceptions not applicable to the submitted facts, become "final and conclusive upon all persons" (including the U.S. Government) within 90 days after the date of liquidation.

Holdings.—(1) The mere blending of water with concentrated orange juice for manufacturing of grade A quality to reduce the degree brix of the concentrate is not a manufacture or production for drawback, and (2) no recourse can be taken in this case to recover drawback allowed on entries liquidated in 1978.

Alternatives.—There are blending operations that may change the character (or quality) and use of grade A concentrated orange juice for manufacturing which also result in reducing the degree brix of the concentrate. Some of the blending operations are with the use of the following:

1. Fresh orange juice;
2. Pasteurized orange juice;
3. Essential oils and flavoring components;
4. Essential oils, flavoring components and water;
5. Essential oils, flavoring components and other orange concentrates; and
6. A combination of any of the above.

(C.S.D. 80–163)

Duty Assessment: Value Requirement for Samples Classifiable in Item 860.30, TSUS

Date: November 28, 1979
File: R:CV:V BS
542025

This is in further reference to your letter of June 15, 1979, on behalf of (client), in which you requested a ruling regarding the classification of certain wearing apparel used for the purpose of

soliciting orders for foreign merchandise, and the valuation of such apparel. Our ruling letter of September 4, 1979, dealt solely with the classification issues involved. This response addresses the value issue raised in your submission.

The issue involved is whether all merchandise meeting the requirements of item 860.30, TSUS, must be valued at $1 or less per unit. The response to this question depends primarily upon the meaning of the term "or" in the statute, as interpreted in light of the legislative history and rules of statutory construction.

> Item 860.30, TSUS, provides duty-free treatment for any sample * * * valued not over $1 each, *or* marked, torn, perforated, or otherwise treated so that it is unsuitable for sale or for use otherwise than as a sample * * *. [Italic added.]

Customs has interpreted this statute as providing a dichotomy between samples valued at $1 or less, and those samples unsuitable for sale due to mutilation but nevertheless valued over $1. (While the samples in either case are subject to appraisement under section 402 or 402a, Tariff Act of 1930, as amended, the appraised value of the samples is irrelevant to their inclusion under item 860.30.)

However, it is your opinion that when read in its entirety, the implication is that a sample which is worth less than $1 or a sample which has been marked, torn, or perforated stand on equal footing, and therefore, the damaged samples should have nominal value and be worth $1 or less. In the alternative, you believe the value of a damaged garment should be equal to the price at which a textile processor would purchase the garment for the purpose of reclamation. In such case, the entered value would be determined by the number of pounds times the current market price for that fiber.

As support for your position, you cite article II of the International Convention to Facilitate the Importation of Commercial Samples and Advertising Material, to which the United States became a signatory on May 28, 1953, and which was implemented by paragraph 1821 of the Tariff Act of 1930, predecessor to item 860.30, TSUS. Article II, entitled "Exemption from import duties for samples of negligible value", provides that:

> Each contracting party shall exempt from import duties samples of goods of all kinds imported into its territory, provided such samples are of negligible value and are only to be used for soliciting orders for goods of the kind represented by the samples with a view to their importation.

Paragraph 1821 of the Tariff Act of 1930, as added by Public Law 85–211 (71 Stat. 486), was approved on August 28, 1957, and provides in pertinent part the following:

> (a) Except as provided in subparagraphs (b), (c), and (d), any sample to be used in the United States only for soliciting orders for products of foreign countries.
>
> (b) Subparagraph (a) shall apply to a sample only if its value does not exceed $1, *except* that this limitation shall not apply to (1) any sample which is marked, torn, perforated, or otherwise treated, in such a manner that such sample is unsuitable for sale or for use otherwise than as a sample, or (2) any sample which is covered by subparagraph (c) or (d). [Italic added.]

It is apparent that paragraph 1821 (and its successor) has gone beyond the prescribed limits of article II of the convention by permitting duty-free entry of mutilated articles, whatever their value. This policy, however, was not new to Customs, as explained in the following pertinent Senate report, discussing paragraph 1821:

> H.R. 5924 would provide for duty-free entry of certain samples to be used in the United States only for soliciting orders for products of foreign countries; the samples that could be so entered would be limited to ones valued at less than $1 each *or* samples that have been mutilated in such ways as to leave them useful only as samples * * *. [Italic added.]
>
> At present, samples, *regardless of value*, are enterable free of duty under bond, the bonds being subject to liquidation upon exportation of the samples so entered. Samples valued at less than $1 each are also presently enterable free of duty under section 321 of the Tariff Act, a provision which authorizes collectors of Customs * * * to admit free of duty articles valued at not more than $1 each. For this reason, *enactment of H.R. 5924 would not in important degree alter the present tariff treatment of samples*. [Italic added.] See Senate Report No. 852, page 1716, United States Code Congressional and Administrative News, vol. 2 (1957).

Accordingly, the legislative history of paragraph 1821 clearly reflects a dichotomy between samples valued at $1 or less, and other samples that have been mutilated. Item 860.30, TSUS, continues this dichotomy, but uses "or" as the disjunctive term rather than the language of paragraph 1821, supra.

Furthermore, we note that the rules of statutory construction require such an interpretation. In the construction of a statute, it is the legislative intent manifested in the statute that is of importance, and such intent must be determined primarily from the language of the statute. See *American Medical Association* v. *United States*, 317 U.S. 519, 63 S. Ct. 326. The "common understood meaning" should be applied to terms employed in the enactment of a statute. See *Re Watkins' Estate (Fla.)*, 75 So. 2d 194, 45 A.L.R. 2d 1360. Thus, the word "or" as used in a statute is a disjunctive term indicating that the various members of the sentence are to be taken separately. See *Senate* v. *Dickens*, 66 Ariz. 86, 183 P. 2d 148.

Accordingly, we find that item 860.30, TSUS, provides for duty-free treatment of samples valued at $1 and under, and also provides similar treatment for mutilated samples valued in excess of $1.

(C.S.D. 80–164)

Classification: Temporary Importation Under Bond; Live Invertebrate Marine Worms Imported for Scientific Research

Date: November 23, 1979
File: RRUCMC
060896 LCS
060400 LCS

This ruling concerns the tariff status of invertebrate marine worms, phylum Sipuncula, from the offshore areas of Canada, Australia, New Zealand, and/or the Caribbean area, specifically Cayman Island, and presumably imported therefrom, for scientific research purposes.

Facts.—Live invertebrate marine worms, phylum Sipuncula, from various offshore areas of the world are to be imported into the United States for scientific research purposes. Once received at the laboratory, these specimens are killed and an unspecified protein is extracted from their tissue for further research.

Issue.—The classification of live invertebrate marine worms imported for scientific research purposes.

Law and analysis.—Live animals other than birds, asses and burros, cattle, foxes, goats, horses and mules, sheep, swine, or turtles, are provided for in item 100.95, Tariff Schedules of the United States (TSUS), dutiable at the reduced column 1 rate of duty of 3.5 percent ad valorem.

Item 852.20, TSUS, provides for the duty-free entry of wild animals (including birds and fish) imported for use, or for sale for use, in any scientific public collection for exhibition for scientific or educational purposes. However, based on the information provided, it is apparent that these marine worms are not intended for inclusion "* * * *in any scientific public collection for exhibition* * * * [italic provided]", albeit obvious that they are to be used "* * * for scientific or educational purposes." Accordingly, since both prerequisite conditions are not herein met, classification in item 852.20, TSUS, is precluded.

Alternatively, item 864.30, TSUS, provides that articles intended solely for testing, experimental, or review purposes, including plans, specifications, drawings, blueprints, photographs, and similar articles for use in connection with experiments or for study may be imported without the payment of duty, under bond for their exportation within 1

year from the date of importation, which 1-year period may be extended at the discretion of the Secretary of the Treasury, upon application, for one or more further periods of time which, when added to the initial 1-year period, shall not exceed a total of 3 years.

Upon satisfactory proof that any article admitted under the provisions of item 864.30, TSUS, has been destroyed because of its use for any purpose within these provisions, the obligation under the bond terms to export such articles shall be deemed to be satisfied.

Holding.—Live marine worms, phylum Sipuncula, intended for scientific research purposes are classifiable either under the provision for other live animals in item 100.95, TSUS, dutiable at the reduced column 1 rate of duty of 3.5 percent ad valorem, or under the provision for articles intended solely for testing, experimental or review purposes in item 864.30, TSUS, entitled to temporary duty-free entry under bond provided the requirements therefore are complied with.

Articles subject to classification in item 100.95, TSUS, have been designated "eligible articles" for purposes of the generalized system of preferences (GSP) and, if imported in accordance with the provisions of general headnote 3(C), TSUS, from the Cayman Islands, a designated beneficiary developing country (BCD), or other BCD, are entitled to duty-free entry.

(C.S.D. 80–165)

Manipulation in Bonded Warehouses: Reducing the Alcoholic Content of Imported Duty- and Tax-Paid Bulk Beer; Eligibility for Warehousing

Date: November 29, 1979
File: WAR–1–RRUCDB L
211076

Issue.—It is proposed to reduce the alcoholic content of imported duty- and tax-paid bulk beer by 50 percent in a Customs-bonded warehouse by the addition of an equal volume of water. The product will then be bottled. Does this proposed operation constitute a manipulation allowable in warehouse within the meaning of 19 U.S.C. 1562?

Facts.—An importer proposes to import bulk beer at a given alcoholic content and reduce the alcoholic content of the beer by 50 per centum subsequent to the payment of internal revenue tax and Customs duty. The reduction in alcoholic content would be accomplished by adding to the imported beer an equal volume of water.

The volume of beer, therefore, would be increased twofold. The product would then be bottled.

Law and analysis.—Title 19, United States Code, section 1557(a) provides in part that:

> (A)ny merchandise *subject to duty* * * * may be entered for warehousing and be deposited in a bonded warehouse at the expense and risk of the owner, importer or consignee [italic added].

The statement of facts indicates that the proposed operation contemplates the placing of imported duty- and tax-paid bulk beer in a Customs-bonded warehouse for the purpose of diluting with water to reduce the alcoholic content and for bottling. On the bare statement of facts, the operation would not be permissible since duty-paid merchandise may not be placed in a Customs-bonded warehouse.

Section 144.1(c), Customs Regulations (19 CFR 144.1(c)), however, provides in pertinent part that:

> If merchandise has been entered under other than a warehouse entry and has remained in continuous Customs custody, a warehouse entry may be substituted for the previous entry. If estimated duties were deposited with the superseded previous entry, that entry shall be liquidated for refund of the estimated duties without awaiting liquidation of the warehouse entry.

It should also be noted that a proposal has been submitted to amend 19 U.S.C. 1557(a) by deleting the phrase "subject to duty". The amendment, if approved, might be interpreted to allow the deposit of duty-paid merchandise in a Customs-bonded warehouse. There is no indication at this time as to whether or when the proposed amendment might be approved.

Assuming, however, that the imported bulk beer can be placed in a Customs-bonded warehouse, the issue is whether or not the proposed operation of dilution and bottling may be performed.

Title 19, United States Code, section 1562, provides in part that:

> * * * upon permission therefor being granted by the Secretary of the Treasury, and under Customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition, *but not manufactured*, in bonded warehouses established for that purpose and withdrawn therefrom * * * for consumption, upon payment of the duties accruing thereon, in its condition and quantity, and at its weight, at the time of withdrawal from warehouse * * * [italic added].

The language of section 1562 clearly states that manipulation does not include manufacture. However, it is clear from the phrase "cleaned, sorted, repacked, or otherwise changed in condition," and other language in the section, that manipulation is more than mere storage.

The Supreme Court defined the word "manufacture" for Customs purposes in *Anheuser-Busch Brewing Association* v. *United States*, 207 U.S. 556 (1907) as follows:

> Manufacture implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labor, and manipulation. But something more is necessary, as set forth and illustrated in *Hartranft* v. *Weigiman*, 121 U.S. 609 (1887). There must be a transformation; a new and different article must emerge, "having a different name, character, or use."

The test announced in the *Anheuser-Busch* case is a flexible one, as emphasized by the Customs Court in *United States* v. *International Paint Co.*, 35 C.C.P.A. 87, 93 (1948):

> It is true, as the Customs Court pointed out, that both the imported and exported products bore the name "paint" and that in that respect the exported product did not have a distinctive name different from that of the imported product. The fact that an imported product called "paint" was imported and that an exported product resulting from the processing of the imported substance was also called "paint" has been greatly emphasized by counsel * * * but we may not overlook the fact that, as also stated by the Customs Court, "the requirements of change of name, character, or use given in the definition are stated in the disjunctive."

As we understand the proposed operation, beer with an alcoholic content of 9 percent will be imported. Subsequent to importation, an equal volume of water will be added to the beer, reducing the alcoholic content and doubling the volume. The beer will then be bottled. It is our further understanding that the beer, as imported, is fit for consumption.

It is our view that since the product admitted into warehouse is beer and the product withdrawn from warehouse is still beer, although admittedly in a different condition, the described operation is permissible as a manipulation under 19 U.S.C. 1562, since the product is "otherwise changed in condition, but not manufactured."

We note that 19 U.S.C. 1311, which relates to bonded manufacturing warehouses, provides in part that:

> * * * distilled spirits which are reduced in proof and bottled in such warehouses, shall be deemed to have been manufactured *within the meaning of this section* * * * [Italic added.]

Since that provision refers only to distilled spirits and is applicable only to procedures in section 1311 bonded manufacturing warehouses, it has no effect upon the reduction in alcoholic content of beer in a manipulation warehouse.

Holding.—Imported duty- and tax-paid bulk beer may not be placed in a Customs-bonded warehouse under current law and regula-

tions. However, imported bulk beer, if entered for warehouse, may be reduced in alcoholic content by the addition of an equal volume of water. The procedure is a permissible manipulation within the meaning of 19 U.S.C. 1562. The beer, if withdrawn from warehouse for consumption following the manipulation, will be dutiable in its condition and quantity, and at its weight, at the time of withdrawal from warehouse, with such additions to or deductions from the final appraised value as may be necessary by reason of change in condition.

(C.S.D. 80-166)

Marking: Use of Tradename as Acceptable Marking on Parts of Watches

Date: December 7, 1979
File: MAR-2-05-RRUEE
710902 HS

This was initiated by (name), customhouse brokers, on behalf of Sundial Enterprises, Ltd. It concerns whether the trademark "Sundial" is acceptable for marking purposes under the special marking requirements for watches.

Issue.—Whether the trademark "Sundial" is an acceptable marking on parts of watches.

Facts.—Sundial Enterprises, Ltd., imports watches into the United States. The watches are marked with the company's registered trademark "Sundial." The company claims that all its business is done under the name "Sundial." Its letterheads and checks bear the name Sundial Enterprises, Ltd.

Law and analysis.—Schedule 7, part 2, subpart E, headnote 4, Tariff Schedules of the United States (1978), sets forth special marking requirements for watches. According to these requirements, any movement or case imported into the country shall not be permitted to be entered unless conspicuously and indelibly marked by cutting, die-sinking, engraving or stamping, with among other things, the name of the manufacturer or purchaser. The special marking requirements for watches are strictly construed.

T.D. 42092 states that where the law requires the name of the maker or purchaser on an imported article, the bona fide name is required and a trade name or trademark will generally not be accepted. A trademark will be accepted only when it includes the actual name of the manufacturer or purchaser. In cases, however, where the manufacturer or purchaser regularly carries on his business under a duly registered trade name, such trade name would be regarded as the

bona fide name of the manufacturer or purchaser for the purposes of importation.

In this case, "Sundial" is the registered trademark of Sundial Enterprises, Ltd., but the actual full name of the company is Sundial Enterprises, Ltd. The company claims that the "Sundial" marking should be sufficient marking, however, as the company does all its business under the name "Sundial."

For purposes of the special marking requirements, we are of the opinion that the name under which a company actually carries on its business will be acceptable, whether it is a trademark or a trade name. A single word, such as "Sundial," will be acceptable if it identifies the company. The kind of trademark which will not be be acceptable marking for purposes of the special marking requirements is one which describes or refers to a particular characteristic or feature of a watch or clock, but is not the name under which the company carries on its business.

Holding.—A single word, such as "Sundial," which identifies the company that manufactures or purchases watch components or cases is an acceptable marking on parts of watches.

(C.S.D. 80–167)

Bonds: Whether Bond Given To Assure Exportation or Destruction May Be Canceled by Entry of Merchandise for Warehousing

Date: December 10, 1979
File: CON–9–RRUCDB MM 210913

Issue.—Whether a bond given to assure the exportation or destruction of merchandise admitted temporarily free of duty may be canceled if the goods are entered for warehouse under a warehouse entry bond.

Facts.—A shipping skid used for holding a reactor's pressure head during transportation was admitted temprarily free of duty under bond pursuant to item 864.45, Tariff Schedules of the United States. The skid was imported on a loan basis to be returned to France. The importer now intends to purchase and retain possession of the skid and inquires as to the procedure to be followed to cancel the bond and original entry upon presentation and acceptance of a warehouse entry with required bond.

Law and analysis.—Headnote 1, schedule 8, part 5C, Tariff Schedules of the United States, which governs the entry of articles admitted temporarily free of duty under bond, provides in part that

articles, when not imported for sale or sale on approval, may be admitted into the United States without payment of duty under bond for their exportation within certain time limits.

Section 10.39(d)(1) of the Customs Regulations states in part as follows:

> If any article entered under schedule 8, part 5C, Tariff Schedules of the United States * * * has not been exported or destroyed in accordance with the regulations in this part within the bond period (including any lawful extension), the District Director shall make a demand in writing under the bond for the payment of liquidated damages equal to the entire amount of the bond. If the entry covering the articles is charged against a term bond, the demand shall be limited to an amount equal to double the estimated duties applicable to such entry. * * *

Exportation, therefore, is a statutory requirement which cannot be waived. Further, the bond posted at the time of entry obligates the importer to either export or destroy the merchandise within the prescribed time limits and cannot be accomplished by entering the merchandise into a warehouse. Failure to export or destroy articles admitted temporarily free under bond constitutes a breach of bond resulting in a demand for liquidated damages.

Concerning the substitution of a warehouse entry for the temporary importation entry, under the authority of section 10.31(g) of the Customs Regulations, such a substitution could only take place if the original entry was made because of a clerical error, mistake of fact or other inadvertence within the meaning of 19 U.S.C. 1520(c)(1). If filing the temporary importation entry comes within the purview of 19 U.S.C. 1520(c)(1), then documentary evidence should be submitted to the District Director to substantiate such a claim.

Holding.—A bond given to assure the exportation or destruction of merchandise admitted temporarily free of duty may not be canceled by entering the goods for warehouse under a warehouse entry bond. Cancellation can only be accomplished upon exportation or destruction of the goods under Customs supervision or upon payment of liquidated damages.

(C.S.D. 80–168)

Export Value: Dutiability of Freight Charges; Section 402(b), Tariff Act of 1930, as Amended

Date: December 11, 1979
File: RRUCV RP 542064

This is in reference to your letter of September 25, 1979, concerning the importation of seamless pipe from Japan.

You indicate that the importer purchases the seamless pipe in Japan on an f.o.b. Japanese port basis. The final destination for the pipe will be Prudhoe Bay, Alaska.

The routing of the shipments will be as follows:

(1) Ocean freight to Vancouver, British Columbia;

(2) Rail freight from Vancouver to Calgary, Alberta (where the pipe will be coated and recrated for reshipping);

(3) Rail freight from Calgary to Hay River, Northwest Territory; and

(4) Barge from Hay River to Prudhoe Bay, Alaska.

You ask whether the ocean freight from Japan to Canada and the rail freight from Canada to Alaska form part of the dutiable value of the subject merchandise.

We are assuming, for the purpose of this reply, that export value, section 402(b), Tariff Act of 1930, as amended, is the proper basis of appraisement for the subject merchandise. Section 402(b) provides:

> (b) *Export value.*—The export value of the imported merchandise shall be the market value or the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature, and all other costs, charges, *and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States* [Italic added.]

In view of the above, Customs has held that, ordinarily, any cost incurred after the merchandise is packed ready for shipment to the United States, is not a part of the appraised value of merchandise for Customs purposes. Accordingly, it is our opinion in the instant case that the ocean and rail freight charges and the costs in Canada of coating and recrating incurred after the merchandise leaves the Japanese port do not form part of the dutiable value of the imported pipe.

We note that since the merchandise in question is being shipped to the United States through an intermediate country (Canada), it becomes necessary to determine the country of exportation. If the intermediate country is found to be the country of exportation, certain costs incurred after shipment from the country of origin will be added to the value of the merchandise in order to arrive at the appraised value of the imported merchandise in the intermediate country, e.g., the cost of the transportation from the country of origin to the intermediate country. However, if it is established by the invoice, bill of lading, or other documentary evidence that the merchandise was under a contract of sale to and destined for a purchaser in the United States at the time of original shipment, it shall be treated as exported from the country of origin. In this regard, see section 152.23, Customs Regulations.

(C.S.D. 80–169)

Classification: Wraparound, Fastenable Wool Body Protector

Date: December 11, 1979
File: CLA-2:RRUCGC
060939 BB

This ruling concerns the tariff classification of a "Hypothermia Emergency Lifesaving Protector."

Issues.—Whether the subject merchandise is lifesaving apparatus imported for the use of an institution established to encourage the saving of human life, a blanket, or an article of textile materials not specially provided for.

Facts.—This ruling is based upon information about the merchandise contained in the illustrated brochure which accompanied the request for ruling.

The merchandise is stated to be of 100 percent wool with velcro closures. The brochure also refers to a waterproof ground sheet which, from the illustration, appears to be part of the same article. However, we cannot determine whether this ground sheet is also made from wool. For purposes of this ruling we assume the article is in chief value of wool.

The merchandise folds out flat. It appears to be longer than a person is tall, with a hood at one end and an extension beyond the feet at the other. The protector appears to extend 18 to 24 inches on either side of the person's body. The foot extension folds up over the feet while the side extensions wrap across the body. Adjustable velcro

fasteners allow the victim to be encased by the protector in cocoon-like fashion. When not in use the protector folds into a self-contained unit with a shoulder strap for easy carrying.

The inquirer states that it will act as the importer and sales representative for this merchandise in the United States. The stated purpose of the protector is to keep an accident or shock victim warm until medical treatment begins. The inquirer and the brochure describe the merchandise as a lifesaving device. The brochure states that "the stimulus for the development of the protector was furnished by the World Lifesaving Organization."

Law and analysis.—Item 853.10, Tariff Schedules of the United States (TSUS), provides for the duty-free entry of lifesaving apparatus imported for the use of an institution established to encourage the saving of human life. The subject merchandise appears to be lifesaving apparatus. However, headnote 1, part 4, schedule 8, TSUS, requires that in order to be given duty-free treatment such apparatus must be "exclusively for the use of the institutions involved and not for distribution, sale or other commercial use within 5 years after being entered."

As the inquirer intends to act as a commercial distributor and since the brochure states the protectors should be carried on industrial and construction vehicles, private aircraft, small boats, and by ski lodges, it appears that most of these protectors would not qualify for entry under 853.10, TSUS.

If specific protectors are imported for use by a police or fire rescue unit, for example, the distributor may act as the agent for such unit by identifying the qualifying institution at the time the merchandise is entered. Under these circumstances the protectors may be entered under item 853.10, TSUS. See Headquarters Ruling Letter (HRL) 043533, dated March 10, 1976.

The inquirer states that the subject merchandise is not a blanket. We agree. Headnote 1(b), subpart B, part 5, schedule 3, TSUS, states:

> (b) the term "blankets" includes baby carriage robes, lap robes, and steamer rugs notwithstanding the fact that they are not chiefly used as bed furnishings

All of the items named in the headnote are primarily used as covers. The subject merchandise, however, is more than a cover. It is designed and used as a wraparound, fastenable, lifesaving device. In HRL 060334, dated August 30, 1979, Customs held that a "blanket wrap" with a zippered-snap closure system was classifiable as an article of textile materials not specially provided for rather than a blanket. The same principal applies to the instant merchandise.

Holding.—Assuming these protectors are in chief value of wool, that they are woven and that they are not ornamented, the merchandise is properly classifiable under the provision for articles not specially provided for, of textile materials; other articles, not ornamented, of wool, other, in item 388.40, TSUS, dutiable, if a product of New Zealand, at the column 1 rate of 16 percent ad valorem.

(C.S.D. 80–170)

Classification: Shirts as Underwear; Shirts and Pants as Entireties

Date: December 12, 1979
File: RRUCMC
060699 MH

This ruling concerns the tariff classification of several shirts, products of West Germany.

Issues.—(1) Whether the submitted samples are classifiable as underwear for tariff purposes.

(2) Whether the submitted samples, imported together with their respective pants portions, constitute entireties for tariff purposes.

Facts.—Four sample shirts are presented. All are of knit construction, and are stated to be composed of 45 percent wool, 20 percent angora rabbit hair and 35 percent nylon. They are labeled and described by the inquirer as follows:

Sample 1—men's striped crew-neck shirt, style 921/27 (ladies' style L921/47)

Sample 2—ladies' crew-neck shirt, style L920/27 (men's style 920/47)

Sample 3—ladies' zippered turtleneck shirt, style L920/82 (men's style 920/82)

Sample 4—men's turtleneck shirt, style 920/52 (ladies' style L920/52)

The inquirer presents exhibits which show that the merchandise is advertised as underwear. In addition, portions of several catalogs are presented in which the merchandise is referred to as underwear. The inquirer indicates that catalog orders will comprise between one-third and one-half of the total orders for the instant merchandise.

Law and analysis.—The competing provisions of the Tariff Schedules of the United States (TSUS) are as follows:

Schedule 3, part 6, subpart E:		
Other underwear, not ornamented:		
Of wool:		
378.35	Knit	37.5¢ per lb+ 6.5% ad val.
Schedule 3, part 6, subpart F:		
Other women's, girls', or infants' wearing apparel, not ornamented:		
Of wool:		
Knit:		
Other:		
Valued over $5 per pound:		
382.58	Other	37.5¢ per lb+ 20% ad val.

The leading case concerning the tariff definition of the term underwear is *Children's Hose, Inc.* v. *United States*, 55 Cust. Ct. 6, C.D. 2547 (1965). In *Children's Hose* the Customs Court held that in order for a garment to be classifiable as underwear, that garment must be completely concealed during its normal wear. The merchandise at bar consisted of certain leotards which were found to have had specialized uses as outerwear and were held classifiable as wearing apparel for tariff purposes.

In urging that the instant merchandise is underwear, the inquirer relies on Headquarters ruling letter 059017 (dated Apr. 19, 1978) in which certain merchandise, sold exclusively in catalogs, was held to constitute underwear despite the fact that the garments were capable of being used as outerwear. The Customs Service noted that garments which were advertised and sold through catalogs rather than over the counter were less likely to be purchased for a fugitive use as outerwear.

Unlike the merchandise presented in HRL 059017, which was sold exclusively through catalogs only one-third to one-half of the instant merchandise is to be sold in catalogs. The presumption that the merchandise is less likely to be sold as outerwear is not applicable. Reliance on HRL 059017 is therefore, misplaced.

The inquirer stresses that the construction of the merchandise is relevant in determining its classification. The Customs Service agrees. In view of *Children's Hose*, *supra*, however, the basic inquiry must remain whether the garment will be visible with the wearer conventionally attired.

The visibility test of *Children's Hose* is determinative in considering the classification of the turtleneck garments. Portions of those garments, like the leotards in *Children's Hose*, are visible when worn.

Accordingly, the Customs Service concludes that samples 3 and 4 cannot be considered underwear for tariff purposes.

The holding in *Children's Hose* does not similarly dictate the classification of samples 1 and 2. No portion of those garments will be visible when they are normally worn.

The Customs Court has held that the provisions for wearing apparel are use provisions. *Admiral Craft Equipment Corp.* v. *United States*, ——, Cust. Ct. ——, C.D. 4796 (1979). The provisions for underwear (a type of wearing apparel), must likewise be considered use provisions.

General headnote 10(e)(i), states that a tariff provision controlled by use is governed by the chief use of the merchandise. It remains to determine the chief use of samples 1 and 2.

The determination of the chief use of particular merchandise must be based on the evidence which is presented. The inquirer has shown that the instant merchandise is advertised, packaged, and sold as underwear. It is specially constructed so as to retain warmth. In the absence of evidence to the contrary, the Customs Service concludes that the chief use of items 1 and 2 is as underwear. They are, thus, classifiable as underwear for tariff purposes.

The final question presented is whether the instant shirts constitute entireties when imported together with their respective pants portions. In Headquarters Ruling Letter 059722 (dated Apr. 13, 1979), the Customs Service enunciated the following criteria in determining whether wearing apparel sets constitute entireties:

> Accordingly, in the absence of an established and uniform practice to the contrary, the Customs Service will usually classify wearing apparel sets as entireties if (1) the components are coordinated as to color to the extent that it is obvious that those components were designed and intended to be worn together; (2) the components of the set are sold as a unit and not separately; and (3) the components, when joined together, form a new article which possesses a character or use different from that of its parts, or one of the components in the set is so predominant that the other components are merely incidental to that predominant component.

The instant merchandise is packaged and sold separately. The shirts and longies do not constitute entireties for tariff purposes.

Holding.—Assuming the instant merchandise is in chief value of wool, it is classifiable as follows: Samples 1 and 2 are classifiable in item 378.35, TSUS, dutiable at the rate of 37.5 cents per pound plus 6.5 percent ad valorem.

Samples 3 and 4 are classifiable in item 382.58, TSUS, dutiable at the rate of 37.5 cents per pound plus 20 percent ad valorem.

(C.S.D. 80–171)

Drawback: Designation of Same Kind and Quality Merchandise; Tinplate Coils

Date: December 12, 1978
File: DRA–1–09–RRUCDB: B 211104

Issue.—May tinplate be designated on a total base weight, rather than on a grade-for grade basis, for issuance of drawback under 1313(b)?

Facts.—A manufacturer produces sheet tinplate from imported tinplate coils. Upon receipt of each coil, its base weight and coating are recorded. The initial manufacturing step is "sheeting," whereby the coil is placed on line and cut into specific sheet sizes. Each sheet is then electronically scanned to detect flaws in the tin coating. It is this step which divides the tinplate sheets into prime and lesser grades.

In order to sell these lower grade sheets in commercial size lots, various base weights and coating arecombined. Upon exportation of these lots, the manufacturer can show total pounds of tinplate, but can define the base weights and coatings in ranges only. An example would be "bundle A contains 1,000 pounds tinplate; base weight 70 to 85 pounds, coating 0.25 to 0.50."

Law and analysis.—Currently, tinplate is dutiable at either 8 percent ad valorem, if valued not over 10 cents per pound (608.91, TSUS), or eight-tenths cent per pound, if valued over 10 cents per pound (608.92, TSUS). It is claimed by the applicant that all prime coated cold-rolled steel, no matter what the base weight or coating thickness, is valued well above 10 cents per pound, effectively placing an eight-tenths-cent-per-pound duty on all importations of tinplate. The applicant therefore believes that there would be no difference in drawback recovery regardless of base weight and coating and that designation may be made on total pounds of imported tinplate.

One fundamental of 1313(b) drawback is that imported merchandise of the same kind and quality as domestic merchandise used in production must be designated for drawback. To insure that same kind and quality tinplate will be designated, we have required that the parallel columns in a drawback proposal indicate ASTM, AISI, or SAE specifications for the coating and base metal. Another fundamental for allowance of drawback under 1313(b) is that the exported articles upon which drawback is claimed were produced with same kind and quality merchandise, whether imported, domestic, or a combination of the two.

Should designation in this case be made on a weight basis alone, Customs would have no way of determining whether same kind and quality merchandise had been used in manufacture of the exported sheets. The same kind and quality requirement is statutory, and we must insure that it is met in 1313(b) drawback situations. To adopt applicant's theory could result in our allowing drawback on dissimilar designated merchandise, so long as a specific rate of duty on that merchandise was the same as that which would have been assessed on the domestic had it been imported. This is not permitted by the language of the statute.

Holding.—Tinplate must be designated on a grade-for-grade basis, both as to coating and base metal. This ruling should not be construed as stating the mere cutting of tinplate coils into sheets is a manufacture or production within the meaning of the drawback laws.

(C.S.D. 80–172)

Classification: Leather Boot Roller Skates; General Interpretative Rule 10(h), TSUS

Date: December 12, 1979
File: CLA–2:RRUCGC
062466 c

This ruling concerns the tariff classification of leather boot roller skates without wheels and bearings manufactured in Taiwan.

Facts.—The sample is a roller skate boot with the sole plate and truck assemblies permanently attached. The bearings and wheel assemblies are not attached.

The inquirer maintains that this merchandise is classifiable under the provision for skates (including footwear with skates permanently attached), and parts thereof, roller skates, and parts thereof in item 734.90, Tariff Schedules of the United States (TSUS).

Issue.—Whether the merchandise is classifiable as claimed by the inquirer or whether the shoe portion is separately classifiable as footwear under schedule 7, part 1, subpart A, TSUS, and the skate portion under the provision for parts of roller skates in item 734.90, TSUS?

Law and analysis.—Schedule 7, part 1, subpart A, headnote 1(i), TSUS, provides that:

> This subpart covers boots, shoes, slippers, sandals, moccasins slipper socks (socks with applied soles of leather or other material), scuffs, overshoes, rubbers, arctics, galoshes, and all other allied footwear (including athletic or sporting boots and shoes)

> of whatever material composed, and by whatever method constructed, all the foregoing, designed for human wear except (i) footwear with permanently attached skates or snowshoes (see part 5D of this schedule).

The Customs Service has held that if any portion of the roller skate was missing from a shoe-style roller skate, the shoe portion was separately classified as footwear under schedule 7, part 1, subpart A, TSUS, while the skate portion was classified under the provision for parts of roller skates in item 734.90, TSUS.

> We have reconsidered our position in this matter in view of General Headnote 10(h), TSUS, which provides that unless the context requires otherwise, a tariff description for an article covers such article, whether assembled or not assembled and whether finished or not finished.

Following the above cited headnote it is our opinion that the sample roller skate boot with the sole plate and truck assemblies permanently attached constitutes unfinished roller skates.

Holding.—Merchandise represented by the sample is classifiable under the provision for skates (including footwear with skates permanently attached), and parts thereof: Roller skates, and parts thereof, in item 734.90, TSUS, and dutiable at the rate of 5 percent ad valorem.

Pursuant to Executive Order 11888, of November 24, 1975, as amended, various products from designated eligible developing countries have been granted free entry. Articles classifiable under item 734.90, TSUS, which have been produced in Taiwan are entitled to free entry if otherwise qualified. For your information we are enclosing explanatory material.

(C.S.D. 80–173)

Prohibited and Restricted Importations: Copyright Infringement; Brass Christmas Tree Ornaments

Date: December 12, 1979
File: CPR–3–RRUEE
711483 SO

This ruling concerns whether or not a shipment of brass Christmas tree ornaments is considered to be an infringing importation pursuant to section 602 of the 1976 U.S. Copyright Law (17 U.S.C. 602).

Issue.—Would the importation from Japan of a shipment of four brass Christmas tree ornaments of the filigree (cut-out) type invoiced as Santa, Double Bell, Pear Tree, and Partridge in Pear Tree infringe upon the rights of the copyright owner (name of corporation), which has recorded their copyrights for Santa and Child, Gp 116407;

Christmas Double Bell, Gp 115540; Partridge in Pear Tree, Gp 90949; and Filigree Partridge in Pear Tree, Gp 116869, for brass Christmas tree ornaments with Customs for import protection.

Facts.—A shipment of brass Christmas tree ornaments containing those referred to above was imported from Japan through the port of Longview, Washington. Pursuant to section 133.43 of the Customs Regulations (19 CFR 133.43), Customs at Longview notified the importer and the copyright owner of the suspected infringing importation. The importer wrote to our Longview office on July 17, and September 4, 1979, to deny that copying exists, stating that brass Christmas tree ornaments are available from many sources which incorporate subjects associated with Christmas such as Santa, bells, wreaths, partridges, pears, and pear trees. Specific differences in each item as compared to the copyright protected works are alleged to be present. It is also alleged that these traditional designs, particularly with respect to bells, are available in many other mediums in addition to brass, and, presumably, they are in the public domain.

The copyright owner wrote to Customs at Longview, Wash., on August 20, 1979, to make written demand for the exclusion from entry of the detained imported articles as infringing copies of their protected works. The copyright owner also filed the bond required by 19 CFR 133.43(b)(2) with Customs.

Law and analysis.—Section 501 of the 1976 United States Copyright Law (17 U.S.C. 501) provides, in part, that anyone who violates any of the exclusive rights of the copyright owner, as provided by section 106 through 118, or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright. Section 602(a) of the copyright law (17 U.S.C. 602(a)), provides, in part, that inportation into the United States, without authority of the owner of the copyright under this title, of copies or phonorecords of a work that have been acquired outside the United States is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under section 501. Section 603(c) of the copyright law (17 U.S.C. 603(c)), provides, in part, that articles imported in violation of the importation prohibition of this title are subject to seizure and forfeiture, and that forfeited articles shall be destroyed or, alternatively, returned to the country of export whenever it is shown that the importer has no reasonable grounds for believing that his or her acts constituted a violation of law.

The test employed to determine if a design has been copied is whether an ordinary observer who is not attempting to discover disparities between two articles would be disposed to overlook them and regard their aesthetic appeal as the same. The substantial similarity

test was developed in order to bar a potential infringer from producing a supposedly new and different work by employing the tactic of making deliberate, but trivial, variations of specific features of the copyright protected work. It has also been established that copyright in a work protects against unauthorized copying not only in the original medium in which the work was produced, but also in any other medium as well.

Our comparison of the imported articles which are suspected of infringing upon the copyright protected works Santa and Child, Christmas Double Bell, and Filigree Partridge in Pear Tree with photographs of the protected works, reveals, in general, that the imported articles bear a strong resemblance to the copyright protected works. The filigree motif is employed in the imported works Santa and Double Bell to a greater extent than in the copyright protected works and there are other minor differences such as the child seated on the right knee of Santa as opposed to the left knee in the protected work. However, the differences appear to us to constitute a deliberate attempt to make minor variations in the design, while preserving a similar aesthetic appeal to the ordinary purchaser of brass Christmas tree ornaments. The Filigree Partridge in Pear Tree works appear to be almost identical.

We reach a different conclusion with respect to the imported work invoiced as Pear Tree. The copyright protected work is a solid brass pear-shaped design inscribed with a large partridge apparently perched on a bow of a pear tree. However, the imported article, while retaining the pear shape with five large leaves at the top, incorporates significant differences. The filigree design shows a smaller partridge seated in a different pose among many branches, and the rib design for the large leaves is also significantly different. We are of the opinion that this article would not convey the same aesthetic appeal to the ordinary observer as would the protected article.

Holding.—We are of the opinion with respect to the imported articles invoiced as Santa, Double Bell, Partridge in Pear Tree, that, pursuant to 17 U.S.C. 602, these articles would be prohibited entry into the United States as infringing on the rights of the copyright owner (name of corporation). The merchandise is subject to seizure and forfeiture in accordance with 17 U.S.C. 603. The U.S. Customs Service will not reach the issue raised by the importer that these familiar Christmas designs should not be subject to copyright protection because they are in the public domain.

We reach a different conclusion with respect to the imported work invoiced as Pear Tree. We are of the opinion that there is no substantial and hence infringing similarity between this work and the copyright protected work Partridge in Pear Tree. We are recommend-

ing that our Longview, Wash., office release all detained merchandise and transmit the copyright owner's bond to the importer. A copy of this ruling may be furnished to all parties concerned.

(C.S.D. 80–174)

Temporary Importation under Bond: Yard Goods Imported for Baling; Item 864.05, TSUS

Date: December 18, 1979
File: CON–9–RRUCDB L 211212

Issue.—Cotton yard goods are imported into the United States where they are baled and then exported. Is the proposed baling of the yard goods an allowable operation under the temporary importation under bond (TIB) procedure?

Facts.—A domestic company contemplates purchasing cotton yard goods from the People's Republic of China. The yard goods would be brought to its plant in the United States, baled for better compression, and then be exported to Spain.

Law and analysis.—Item 864.05, Tariff Schedules of the United States (TSUS), provides that articles to be repaired, altered, or processed (including processes which result in articles manufactured or produced in the United States) may be admitted temporarily free of duty under bond.

It is clear that the goods will not be repaired or altered. The issue remaining is whether compressing the yard goods into bales is a processing within the meaning of item 864.05, TSUS.

The U.S. Court of Customs and Patent Appeals, in *United States* v. *Border Brokerage Co.* (48 C.C.P.A. 10, 1960) pointed out that:

> Section 308(1) (the predecessor of item 864.05, (TSUS), does not apply broadly to any and all articles repaired, altered or otherwise changed in condition, but is expressly limited to those articles entering this country which are to be repaired, altered or otherwise changed in condition.

Although, in a literal sense, the yard goods are changed in condition by baling, it is our view that the change is wholly incidental to the purpose of entry, which is no more than a repacking of the articles for export. Accordingly, the baling operation is not a processing within the meaning of item 864.05, TSUS.

The operation would be allowable, however, as a manipulation pursuant to 19 U.S.C. 1562 which provides, in part, that:

> Upon permission therefor being granted by the Secretary of the Treasury, and under Customs supervision, at the expense of the proprietor, merchandise may be cleaned, sorted, repacked, or otherwise changed in condition but not manufactured, in bonded warehouses established for that purpose and be withdrawn therefrom for exportation to a foreign country * * *.

That section further provides that:

> Under such regulations as the Secretary of the Treasury shall prescribe, imported merchandise which has been entered and which has remained in continuous Customs custody may be manipulated in accordance with the provisions of this section under Customs supervision and at the risk and expense of the consignee, but elsewhere than in a bonded warehouse, in cases where neither the protection of the revenue nor the proper conduct of Customs business requires that such manipulation be done in a bonded warehouse.

Section 24.17(a)(8). Customs Regulations (19 CFR 24.17(a)(8)), states that:

> When a Customs officer or employee is assigned under authority of section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), to supervise the manipulation of merchandise at a place other than a bonded warehouse, the compensation and expenses of such officer or employee shall be reimbursed to the Government by the party in interest.

If you wish to explore this alternative, we suggest you get in touch with the District Director of Customs at the port where the manipulation would be conducted.

Holding.—The baling of cotton yard goods for exportation is not a repair, alteration, or other process within the meaning of item 864.05, TSUS. It would constitute a permissible manipulation pursuant to 19 U.S.C. 1562.

(C.S.D. 80–175)

Vessel Repair: Dutiability of Vessel Equipment Preordered From Peru and Delivered to the Vessel in the Panama Canal Zone

Date: July 3, 1980
File: VES–13–18–RRUCDC
104529 JL

This ruling concerns the dutiability under the vessel repair statute, 19 U.S.C. 1466, of equipment purchased for an American fishing vessel in a foreign port.

Issues.—(1) Is an item of vessel equipment dutiable under 19 U.S.C. 1466 when it is preordered from Peru and subsequently delivered to the vessel in the Panama Canal Zone?

(2) Was the purchase of the equipment necessitated by a casualty pursuant to 19 U.S.C. 1466(d)(1)?

Facts.—The vessel at issue operates under a register and is engaged in tuna fishing. The seine net was rebuilt and enlarged to increase the fishing capability of the vessel. This modification had the result of pressing the capacity of the power block operation. Accordingly, a new power block was ordered from a firm in Peru in 1978 which shipped the unit to the Panama Canal Zone. In April 1979, the vessel sailed on the fishing voyage at issue and put into the zone in May to pick up the new power block. It was installed by crewmembers of the vessel. The master states that the change in the power block was an urgent necessity for the proper and effective fishing operation of the ship. At the conclusion of the vessel's voyage in October 1979, the cost of the power block was declared by the master but he maintains that the purchase is free of duty under the vessel repair statute.

Law and analysis.—19 U.S.C. 1466(d)(1) states the Secretary of the Treasury is authorized to refund or remit duties * * *

> if the owner or master of such vessel furnishes good and sufficient evidence * * * that—
>
> > (1) such vessel, while in the regular course of her voyage was compelled by stress of weather or other casualty, to put into such foreign port and purchase such equipments, or make such repairs to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination; * * *.

Prior to the implementation of the Panama Canal Treaty on October 1, 1979, and the issuance of T.D. 79–276, footnote 26 to part 4 of the Customs Regulations read as follows:

> The Canal Zone and the Virgin Islands are not "foreign countries" within the meaning of section 466, Tariff Act of 1930, and equipment, repair parts, or materials there purchased or repairs there made on a vessel of the United States are not dutiable.

Headquarters case 102924 dated August 11, 1977, stated that while foreign repairs to U.S. vessels, or equipment purchases by those vessels, in the Canal Zone or the Virgin Islands are not dutiable under 19 U.S.C. 1466, the ruling will not be decisive as to equipment which is merely delivered in those places. It was held that:

> We will consider the dutiability of any commercial transaction brought to our attention where there is evidence that the Virgin Islands or Canal Zone delivery is not the result of a bona fide sale in those places.

Pursuant to Headquatrers case 102924, vessel equipment which is ordered from a foreign country and merely delivered in the Canal Zone is not considered equipment purchased in the Canal Zone within the exemption formerly provided in footnote 26 to part 4 of the Customs Regulations.

In the instant case, there is no claim by the master of the vessel that the purchase of a new power block was necessitated by a casualty as provided for in 19 U.S.C. 1466(d)(1). Further, the new piece of equipment was ordered prior to the vessel's departure from the United States and any damage that was incurred as a result of the modification to the net apparently took place on a previous voyage. Therefore, it cannot be said that the vessel while in the regular course of her voyage was compelled by stress of weather or other casualty to put into a foreign port and purchase equipment to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination.

Holding.—(1) There is no showing that the equipment purchase by the vessel was necessitated by a casualty pursuant to 19 U.S.C. 1466(d)(1), and no remission is authorized.

(2) Vessel equipment preordered from Peru which is delivered in the Canal Zone for installation on an American fishing vessel prior to October 1, 1979, is not considered purchased in the Canal Zone within the meaning of footnote 26 to part 4 of the Customs Regulations and is therefore dutiable under 19 U.S.C. 1466.

Effect on other rulings.—Case 102924 applied.

Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the Office of Regulations and Rulings, U.S. Customs Service, and not otherwise published, is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Treasury decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the Office of Regulations and Rulings.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, attention: Legal Reference Area, room 2404, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229. These copies will be made available at a cost to the requester of 10 cents per page. However, the Customs Service will waive this charge if the total number of pages copied is 10 or less.

Decisions listed in earlier issues of the CUSTOMS BULLETIN, through July 2, 1980, are available in microfiche format at a cost of $23.85 (15 cents per sheet of fiche). It is anticipated that additions to the microfiche will be made quarterly and subscriptions are available. Requests for the microfiche now available and for subscriptions should be directed to the Legal Reference Area. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: August 22, 1980.

JOHN T. ROTH,
Acting Director,
Regulations and Research Division.

Date of decision	File No.	Issue
6–23–80	104499	Vessels: Whether a foreign-built yacht, brought into the United States solely for time and voyage chartering, is dutiable under the tariff schedules

Date of decision	File No.	Issue
8– 5–80	104566	Instruments of international traffic: Incidental use of foreign-built containers in domestic traffic
6–17–80	104699	Vessels: Dutiability of American-built vessel, sold to a Canadian, registered in Canada, and then resold to an American, without ever leaving U.S. waters
7–31–80	104769	Vessels: Requirement that the original register be on board a vessel documented under laws of the United States; unmanned barges
8– 7–80	104812	Carrier control: Whether a foreign vessel may engage in research in U.S. territorial waters
4–14–80	711746	Generalized system of preferences (GSP): Whether GSP status is available when consumption entry was filed after GSP status was modified, although immediate delivery release was obtained prior to effective date of modification
7–17–80	712719	Country-of-origin marking: Whether Japanese plain end pipe threaded and attached to Japanese couplings in Mexico to form oil well casing are substantially transformed in Mexico so that Mexico is the country of origin
7–17–80	712924	Country-of-origin marking: Empty cologne and perfume bottles imported into the United States where they will be filled with various products and sold to department stores for retail sale
7–17–80	713175	Prohibited and restricted importations: Motor vehicles which do not conform to U.S. emission or safety standards
7–11–80	060769	Classification: Stereo photographs; stereo viewers (274.70, 722.55, 722.56)
7–11–80	060825	Classification: Advertisements on flexible polyvinyl chloride sheets (274.90)
7–11–80	060881	Classification: Laxative capsules (440.00)
7–24–80	060884	Classification: Uncooked frozen pastry dough (182.20, 183.01)
7–11–80	061804	Classification: Acrylic knit sweaters made on weft knitting machine (382.04)
3– 5–80	061806	Classification: Building toys (737.55, 737.95)
5–21–80	061964	Classification: Crude alkyl pyridine residues (401.20, 401.46, 401.58, 793.00, 403.90)
6–29–80	062826	Classification: Fertilizer spreader (666.00)
7–11–80	062935	Classification: Tractor for log hauling (692.34)
6–29–80	062964	Classification: Unground radial ball bearings; graphite carbon ball bearings (517.91, 681.10, 680.35)
6–29–80	062970	Classification: Cryogenic container for bull semen (640.20, 657.25, 666.00)
7–11–80	063649	Classification: Combination light and siren (678.50, 732.52)
6–29–80	064077	Classification: Boys' nylon taffeta vest (376.56, 380.84)
7–11–80	064108	Classification: Shoe upper of rayon (700.60)

Date of decision	File No.	Issue
5–19–80	064198	Classification: Hemodialysis pump (660.97, 709.17)
7–11–80	064296	Classification: Commercial baking pans and covers (657.15, 657.25, 657.40, 657.60)
6–29–80	064313	Classification: Ballpoint pen parts (760.40)
6–30–80	064314	Classification: Flexible gear couplings (680.95)
6–29–80	064317	Classification: Vacuum and cooking cutter (666.25, 851.60)
7–11–80	064439	Classification: Cold rolled steel sheets laminated with plastic (657.25)
6–29–80	064454	Classification: Roofing sheets with steel core and layer of asphalt and aluminum on both sides (653.00, 657.25, 657.40)
7–11–80	064455	Classification: Pressure and load equalizer valve (680.27, 685.90)
5– 5–80	064459	Classification: Spring-suspension hobbyhorse (737.80, 737.95)
7–24–80	064466	Classification: Curiosity object (657.35, 765.25)
7–23–80	064490	Classification: Surgical drape (386.50, 389.62, 807.00)
6–29–80	064491	Classification: Plastic cutoff riser for sprinkler system (774.55)
6–29–80	064503	Classification: Plastic envelopes with adhesive backing (790.55)
6–29–80	064581	Classification: Thermostatic mixing valve (680.27)
7–11–80	064595	Classification: Computer play organ (725.47)
7–11–80	064635	Classification: Educational play sets (735.20, 737.95)
7–11–80	064665	Classification: Whether a hammer loop on nonwork jeans is ornamental; whether a rectangular fabric label with plain letters is ornamental on jeans (382.00, 382.33)
7–11–80	064679	Classification: Feeding, folding, ironing, and stacking machines designed for operations in a commercial laundry (664.10, 670.42, 670.50, 678.50)
7–11–80	064718	Classification: Fruit presser; crusher (666.25, 678.50)
7–24–80	064753	Classification: Whether fabric strip on man's pajama top which serves to complete the garment is ornamental (380.21, 380.24, 380.84)
7–11–80	064777	Classification: Sachets (386.04, 386.09, 727.86, 737.22)
6–29–80	064785	Classification: Electric water heater (684.40)
7–11–80	064792	Classification: Plastic match holder (735.20, 772.20, 772.85)
6–25–80	064844	Classification: Fiberglass protective helmets (703.70)
7–11–80	064857	Classification: Shading material (338.30, 355.81, 355.82)
7–30–80	064939	Classification: Blueberry rake (651.39)
7–11–80	065081	Classification: Whether overhanging flaps on a woman's jacket constitute ornamentation (382.04)
7–11–80	065120	Classification: Whether textile loops attached to the back of hunting garment collars constitute ornamentation

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